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POLITICAL LAW

**CONSTITUTIONAL
LAW 1**

I. The Constitution

A. DEFINITION, NATURE, CONCEPTS

A.1. POLITICAL LAW

Political law – branch of public law which deals with the organization and operations of the governmental organs of the State and defines the relations of the State with the inhabitants of its territory. [*People v. Perfecto*, 43 Phil 88 (1922)]

The entire field of political law may be subdivided into:

- (1) **The law of public administration** - organization and management of the different branches of the government
- (2) **Constitutional law** - guaranties of the constitution to individual rights and the limitations on governmental action
- (3) **Administrative law** - exercise of executive power in the making of rules and the decision of questions affecting private rights
- (4) **The law of public corporations** - governmental agencies for local government or for other special purposes [*Sinco*]

A.2. CONSTITUTIONAL LAW

Designates the law embodied in the Constitution and the legal principles growing out of the interpretation and application of its provisions by the courts in specific cases. It is the study of the maintenance of the proper balance between the authority as represented by the three inherent powers of the State and liberty as guaranteed by the Bill of Rights.

A.3. CONSTITUTION DEFINED

- (1) The body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised. [*Cooley, The General Principles of Law in the United States of America*]

- (2) It is the document which serves as the fundamental law of the state; that written instrument enacted by the direct action of the people by which the fundamental powers of the government are established, limited and defined, and by which those powers are distributed among the several departments for their safe and useful exercise, for the benefit of the body politic. [*Malcolm, Phil. Constitutional Law*]
- (3) "A law for the government, safeguarding individual rights, set down in writing." [*Hamilton*]
- (4) According to Schwartz, "a constitution is seen as an organic instrument, under which governmental powers are both conferred and circumscribed. Such stress upon both grant and limitation of authority is fundamental in American theory. 'The office and purpose of the constitution is to shape and fix the limits of governmental activity.'" [*Fernando, The Constitution of the Philippines 20-21 (2nd ed., 1977)*]

A.4. CLASSES OF CONSTITUTIONS

(1) Written v. unwritten.

A **written** constitution's precepts are embodied in one document or set of documents. An **unwritten** constitution consists of rules which have not been integrated into a single, concrete form but are scattered in various sources, such as statutes of fundamental character, judicial decisions, commentaries of publicists, customs and traditions. [*Cruz, Constitutional Law 4-5; Nachura, Outline Reviewer in Political Law 2*]

(2) Enacted (conventional) v. evolved (cumulative)

A **conventional** constitution is enacted formally at a definite time and place following a conscious or deliberate effort taken by a constituent body or ruler. A **cumulative** body is the result of political evolution, not inaugurated at any specific time but changing by accretion rather than by any systematic method. [*Cruz, id., at 5*]

(3) Rigid v. flexible

A constitution is classified as **rigid** when it may not be amended except through a special process distinct from and more involved than the method of changing ordinary laws. It is supposed that by such a special procedure, the constitution is rendered difficult to change and thereby acquires a greater degree of stability. A constitution is classified as **flexible** when it may be changed in the same manner and through the same body that enacts ordinary legislation. The Constitution of the UK is flexible.

N.B. The Philippine Constitution is **written, enacted and rigid**.

Date of Effectivity of the 1987 Const.: *February 2, 1987, the date of the plebiscite, and not on the date its ratification was proclaimed. [De Leon v. Esguerra, G.R. No. 78059, August 31, 1987]*

A.5. BASIC PRINCIPLES

- (1) **Verba legis** – whenever possible, the words used in the Constitution must be given their ordinary meaning except where technical term are employed;
- (2) **Ratio legis est anima** – words of the Constitution should be interpreted in accordance with the intent of the framers;
- (3) **Ut magis valeat quam pereat** – the Constitution should be interpreted as a whole [*Francisco v. House of Representatives, 415 SCRA 44 (2003)*]

A.6. TYPES OF JUDICIAL REVIEW

<i>Europe Judicial Review</i>	<i>US Judicial Review (Followed by the PHL)</i>
Constitutional Courts: centralized, only one court can exercise	US Supreme Court: decentralized; all courts can exercise judicial review
Principaliter: questions are independent of disputes	Incidenter: question that is recognized by the Court must be part of the controversy

B. PARTS OF A CONSTITUTION

- (1) **Constitution of Government** – establishes the structure of government, its branches and their operation; e.g. Art. VI, VII, VIII, IX
- (2) **Constitution of Sovereignty** - provides how the Constitution may be changed; i.e. Art. XVII
- (3) **Constitution of Liberty** - states the fundamental rights of the people; e.g. Art. III [*Lambino v. COMELEC, G.R. No.174153. October 25, 2006*]

C. AMENDMENTS AND REVISIONS

[ART. XVIII –AMENDMENTS OR REVISIONS]

C.1 CONCEPTS

Amendments – An addition or change within the lines of the original constitution as will effect an improvement, or better carry out the purpose for which it was framed; a change that adds, reduces or deletes without altering the basic principles involved; affects only the specific provision being amended. [*Lambino v. COMELEC, G.R. No.174153. October 25, 2006*]

Revisions – A change that alters a basic principle in the constitution, like altering the principle of separation of powers or the system of checks-and-balances; alters the *substantial entirety* of the constitution, as when the change affects substantial provisions of the constitution. [*Id.*]

Difference – Revision generally affects several provisions of the constitution, while amendment generally affects only the specific provision being amended [*Id.*] This distinction is significant because the 1987 Constitution allows people's initiative only for the purpose of *amending*, not revising, the Constitution. [*See Lambino, supra*]

Legal tests

Lambino considered the *two-part test*: the *quantitative* test and the *qualitative* test.

- (1) **Quantitative test** – The court examines only the *number* of provisions affected and does not consider the degree of the change.
- (2) **Qualitative test** – The court inquires into the *qualitative effects* of the proposed change in the constitution. The main inquiry is whether the change will “accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision.” The changes include those to the “fundamental framework or the fundamental powers of its Branches,” and those that “jeopardize the traditional form of government and the system of check and balances.” Whether there is an alteration in the structure of government is a proper subject of inquiry. [See *Lambino, supra*.]

C.2 PROCEDURE

There are two steps in the amendatory process: (1) proposal, and (2) ratification

- (1) **Proposal** – The adoption of the suggested change in the Constitution.
 - (a) **Congress (as a Constituent Assembly)** – a vote of 3/4 of ALL its members.
 - (b) **Constitutional Convention** – Called into existence by (i) 2/3 of all members of *Congress* OR (ii) the *electorate*, in a referendum called for by a majority of all members of Congress [CONST., art. XVII, sec. 3]
 - (c) **People (through a People’s Initiative)** – petition of at least 12% of the total number of registered voters; every legislative district must be represented by at least 3% of the registered voters therein.

- (i) **Limitation on Initiative**: No amendment in this manner shall be authorized (1) within 5 years following the ratification of the 1987 Const. nor (2) more often than once every 5 years thereafter.

- (ii) **Enabling Law**: Constitutional provision on amendments via People’s Initiative not self-executory [*Defensor-Santiago v. COMELEC*, 270 SCRA 170 (1997)]

- (2) **Ratification** – the proposed amendment shall be submitted to the people and shall be deemed ratified by the majority of the votes cast in a *plebiscite*, held not earlier than 60 days nor later than 90 days:
 - (a) After approval of the proposal by Congress or ConCon;
 - (b) After certification by the COMELEC of sufficiency of petition of the people.

Doctrine of Proper Submission – A plebiscite may be held on the same day as a regular election [*Gonzales v. COMELEC*, 21 SCRA 774]. The *entire* Constitution must be submitted for ratification at one plebiscite only. The people must have a proper “frame of reference”. [*Tolentino v. COMELEC*, 41 SCRA 702]. No “piecemeal submission,” e.g. submission of age amendment ahead of other proposed amendments. [*Lambino v. COMELEC*, G.R. No.174153. October 25, 2006]

N.B. The process of *revision* is the same in all respects *except* that it cannot be proposed via a People’s Initiative. [See *Lambino, supra*]

Judicial Review of Amendments – The validity of the process of amendment is not a political question because the Court must review if constitutional processes were followed. [See *Lambino, supra*]

C.3. SUMMARY OF TWO STAGES OF AMENDATORY/ REVISION PROCESS

	<i>By</i>	<i>Proposal</i>	<i>Ratification</i>
<i>Amendments</i>	A. Congress (as Constituent Assembly)	By a vote of 3/4 of all its members	Via Plebiscite , 60-90 days after submission of the amendments
	B. Constitutional Convention	(In practice) per internal rules, limited by the Doctrine of Proper Submission	
	C. People's Initiative	Upon COMELEC's certification of the sufficiency of the petition	
<i>Revision</i>	A. Congress (as Constituent Assembly)	By a vote of 3/4 of all its members	Via Plebiscite , 60-90 days after submission of the revision
	B. Constitutional Convention	(In practice) per internal rules, limited by the Doctrine of Proper Submission	

TABLE OF CASES RE: CONSTITUTIONAL AMENDMENTS AND CHANGES IN GOVERNMENT

<i>Title</i>	<i>Facts</i>	<i>Held and Ratio</i>
Mabanag v. Lopez Vito (1947) <i>Congressional Resolution proposing the Parity Amendment</i>	Resolution of Congress proposing the Parity Amendment was assailed on the ground that it did not comply with the 3/4 rule prescribed by the Constitution.	<i>Petition dismissed.</i> Proposal of amendments to the constitution is a political question. The enrolled copy of the resolution in which it was certified that the proposal had been approved by the required vote was conclusive upon the courts. <i>Modified by Gonzales, infra, and Tolentino, infra.</i>
Gonzales v. COMELEC (1967) <i>Resolutions of Both Houses (RBH) calling for the 1971 Constitutional Convention and amendments to the 1935 Constitution</i>	RBH No. 1 called for an increase in the membership of the HOR; RBH No. 2 called for a Constitutional Convention; and RBH No. 3 called for the amendment of Sec. 16, Art. VI to allow members of Congress to become delegates to the CONCON without losing their seats. Petitioners seek to restrain respondents from enforcing the law passed by Congress submitting RBH Nos. 1 and 2 for ratification during the general elections scheduled on Nov. 1967.	<i>Petition denied.</i> (1) <i>Proposal of amendments</i> is not a political but a <i>justiciable question</i> subject to judicial review. (2) Congress may propose amendments and at the same time call for a Constituent Assembly. (3) Ratification may be done simultaneously with a general election or in a special election called specifically for that purpose. (4) There was a proper submission.
Tolentino v. COMELEC (1971) <i>1971 Constitutional</i>	Validity of a CONCON Resolution (submitting, for ratification, the proposal to lower the voting age to 18) was assailed. The question here is	<i>Petition granted.</i> All amendments proposed by the same Constitutional Convention shall be submitted to the people in a <i>single election</i> .

<i>Convention convened</i>	whether piecemeal amendments to the Constitution could be submitted to the people for ratification or rejection.	
<i>Title</i>	<i>Facts</i>	<i>Held and Ratio</i>
Planas v. COMELEC (1973) <i>Plebiscite cases</i>	Petitioners seek to enjoin respondents from implementing PD 73, which called for a plebiscite (to be held on January 15, 1973) for the constitution approved by the CONCON on 1972, on the theory that: (a) the power to submit is lodged exclusively in Congress, and (b) there is no proper submission to the people.	<i>Petition dismissed.</i> The issue of validity of calling for a plebiscite (submission) is justiciable; BUT, issue became moot.
Javellana v. Executive Secretary (1973) <i>Ratification cases</i>	Petitioners seek to enjoin the respondents from implementing any of the provisions of the “new constitution” not found in the 1935 Constitution, on the theory that it was not validly ratified in accordance with the provisions of Art.1, Section XV.	Although the question of whether a Constitution was validly ratified is a justiciable question, the <i>question of whether a Constitution has come into force and effect</i> is a political question beyond the competence of the Court to decide.
Sanidad v. COMELEC (1976) <i>1976 Amendments</i>	Petitioners question the authority of the President in issuing several PDs proposing amendments to the New Constitution and calling for a national referendum-plebiscite for the said amendments.	(1) The amending process, both as to proposal and ratification, raises a justiciable question. (2) In a crisis government, the President shall have the power to assume the constituent power to propose amendments lodged in the Legislative body.
Mitra v. COMELEC (1981) <i>1973 Constitution, effective.</i>	Petitioners argue that the 1973 Constitution never validly took effect, <i>Javellana</i> aside, on the theory that the 1973 Constitution was still and is still at the stage of proposal. They ask the Court to order a plebiscite for the ratification of the 1973 Constitution.	Even without valid ratification, a new Constitution could come into force and effect by the acquiescence of the people. Popular acquiescence to a new Constitution gives the document the force and effect of the Fundamental Law of the Land, <i>regardless of the method of ratification</i> . If it is accepted by the people (as shown by their participation in several elections and referenda since then), in whom sovereignty resides according to the Constitution, the courts cannot refuse to yield assent to such a political decision.
Lawyers’ League for a Better Philippines v. Aquino (1986) <i>EDSA Revolution</i>	Petitioners questioned legitimacy of the Aquino government.	The question of legitimacy of a new government arising from a successful revolution is a political question beyond the pale of review by the courts.
De Leon v. Esguerra (1987) <i>1987 Constitution ratified</i>	Petitioners question the appointment of respondents as barangay officials and maintain that with the ratification of the 1987 Constitution, the OIC did not have the authority to simply <i>appoint</i> their replacements.	Date of effectivity of 1987 Constitution retroacts to the date of the plebiscite, i.e. 2 Feb. 1987. Provisional Constitution deemed to have been superseded by 1987 Constitution on said date of effectivity.

Santiago v. COMELEC (1997) <i>PIRMA case</i>	Petitioners seek to enjoin respondent COMELEC from acting on the petition by the PIRMA group asking for an order fixing details on how to collect signatures for a people's initiative to amend the Constitution	<p><i>COMELEC permanently enjoined from entertaining or taking cognizance of any petition for initiative until a sufficient law shall have been validly enacted to provide for the implementation of the system.</i></p> <p>The system of initiative found in Article XVII, Sec. 2 is <i>not self-executory</i>. It needs an enabling law before the right of the people could be exercised. However, an examination of its provisions reveals that RA 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned.</p>
Estrada vs. Desierto (2001) <i>EDSA II</i>	Estrada questions legitimacy of Arroyo government and claims, <i>inter alia</i> , that he did not resign from position and that Arroyo is merely an acting president.	(Legal distinction between EDSA I and EDSA II) The government arising from EDSA I was extra-constitutional, while EDSA II was a constitutional exercise of the right to free speech, freedom of assembly, and to petition the government for redress.
Lambino vs. COMELEC (2007) <i>Lambino Group People's Initiative</i>	Petitioners seek review of COMELEC decision denying due course to a people's initiative to amend the 1987 Constitution.	<p>The constituent power reserved to people under Art. XVII Sec. 2 is limited to the power to propose <i>amendments</i> to, not revision of, the Constitution.</p> <p>Moreover, "direct proposal by the people" means that the petition signed by the people should contain the full text of the proposed amendments to the Constitution.</p>

D. SELF-EXECUTING AND NON-SELF-EXECUTING PROVISIONS

D.1. RULE

General Presumption: All provisions of the constitution are self-executing. "Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing" [*Id.*]

Exception: *Statements of general principles*, such as those in Art. II, are usually not self-executing. (*Id.*) Other examples in jurisprudence: constitutional provisions on personal dignity, sanctity of family life, vital role of the youth in nation-building, values of education, social justice and human rights, promotion of general welfare, vital role of the youth in nation-building, promotion of total human liberation and development are merely *guidelines for legislation* (*Id.*; citations omitted.)

Exception to the Exception: The (1) *right to a balanced and healthful ecology* is self-executing [*Oposa v. Factoran (1993)*]. The (2) *promotion and protection of health* [Const., art. II, sec. 15] is also self-executory [*Imbong v Executive Secretary, GR 204819, 8 April 2014*]

N.B. Other "exceptions" to the exception, e.g. (1) right to information in art. III [See *Legaspi v. CSC (1987)*] and the (2) *Filipino First Policy* [See *Manila Prince, supra*] are self-executing because they actually fall under the general rule.

Non-Self Executing: Provisions which merely "la[y] down a general principle." [*Manila Prince, supra*]

Declaration of principles and state policies are not self-executing. [*Espina v. Zamora, G.R. No. 143855; September 21, 2010*]

Legislative's failure to pursue policies do not give rise to a cause of action. (*Id.*)

N.B. A provision may be self-executing in one part, and non-self-executing in another. (*Manila Prince, supra*)

E. GENERAL PROVISIONS

[Art. XVI – General provisions]

(1) Flag of the Philippines [sec. 1]

- (a) Red, white and blue, with a sun and three stars
- (b) Design of the flag may be changed only *by constitutional amendment* [BERNAS]

(2) Name of the country, national anthem, and national seal [sec. 2]

- (a) May be changed by Congress *by law*
- (b) Such law will only take effect upon ratification by the people in a national referendum

(3) Armed Forces of the Philippines [sec. 4]

- (a) Composed of a citizen armed force
- (b) Shall take an oath or affirmation to uphold and defend the Constitution [sec. 5(1)]
- (c) May not be appointed or designated to a civilian position in the government including GOCCs or their subsidiaries [sec. 5(4)]
- (d) Laws on retirement of military officers shall not allow extension of their service [sec. 5(5)]

(e) Recruited proportionately from all provinces and cities as far as practicable [sec.5(6)]

(f) Tour of duty of the Chief of Staff shall not exceed three years [sec. 5(7)] *except* when extended by the President in times of war or other national emergency declared by the Congress [Id.]

(4) Police Force [sec. 6]

- (a) One police force
- (b) National in scope
- (c) Civilian in character

(5) Consumer Protection [sec. 9]

(6) Mass Media [sec.11]

- (a) Ownership and management limited to (i) citizens of the Philippines or (ii) corporations, cooperatives or associations *wholly-owned* and managed by Filipino citizens

(7) Advertising Industry [sec. 11]

- (a) Can only be engaged in by (i) Filipino citizens or (ii) corporations or associations at least 70% of which is owned by Filipino citizens
- (b) Participation of foreign investors is limited to their proportionate share in the capital
- (c) Managing officers must be Filipino citizens

II. General Considerations

A. NATIONAL TERRITORY

Q: What comprises the national territory? What does it consist of?

A: The national territory is comprised of –

- (1) **Philippine archipelago**, with all the islands and waters embraced therein; *Internal waters* – waters around, between, and connecting the islands of the archipelago, regardless of breadth and dimension; and
- (2) **All other territories** over which the Philippines has sovereignty or jurisdiction

It consists of –

- (1) Territorial sea, seabed, subsoil, insular shelves, and other submarine areas
- (2) Terrestrial, fluvial, and aerial domains

A.1. ARCHIPELAGIC DOCTRINE

Statement of doctrine - A body of water studded with islands, or the islands surrounded with water, is viewed as a unity of islands and waters together forming one integrated unit. [N.B. Embodied in Art. II, specifically by the mention of the “Philippine archipelago” and the specification on “internal waters.”]

Treaty limits of the Philippine archipelago

(1) Treaty of Paris of 10 December 1898: “Spain cedes to the United States the archipelago known as the Philippines Islands, and comprehending the islands lying within the following line” xxx

Article 3 defines the metes and bounds of the archipelago by longitude and latitude, degrees and seconds. Technical descriptions are made of the scope of the archipelago as this may be found on the surface of the earth.

(2) Treaty of Washington of 7 November 1900 between the United States and Spain: Ceding Cagayan, Sibuto and Sulu.

(3) Treaty of 12 January 1930 between the United States and Great Britain: Ceding the Turtle and Mangsee Islands. [BERNAS (2003), cited in Justice Velasco’s concurring opinion in *Magallona v. Ermita* (2011)].

Straight baseline method – consists of drawing straight lines connecting appropriate points on the coast without departing to any appreciable extent from the general direction of the coast, in order to delineate the internal waters from the territorial waters of an archipelago.

See R.A. No. 9522–amended R.A. No. 3046, entitled “An Act to Define the Baselines of the Territorial Sea of the Philippines;” specified that baselines of Kalayaan Group of Islands and Bajo de Masinloc (Scarborough Shoal) shall be determined as “Regime of Islands” under the Republic of the Philippines, consistent with the UNCLOS.

R.A. No. 9522 is not unconstitutional: (1) it is a statutory tool to demarcate the maritime zone and continental shelf of the Philippines under UNCLOS III, and does not alter the national territory. (2) While UNCLOS III does not bind the Philippines to pass a baselines law, Congress may do so. (3) The law also does not abandon the country’s claim to Sabah, as it does not expressly repeal the entirety of R.A. No. 5446. [*Magallona v. Ermita*, G.R. No. 187167, 16 July 2011]

B. STATE IMMUNITY

B.1. – SUMMARY OF RULE

General rule – The State cannot be sued.

Exception – the State consents to be sued;
How consent is given –

- (1) Express consent –
 - (a) General law; or
 - (b) Special law
- (2) Implied consent –
 - (a) When the State commences litigation, it becomes vulnerable to a counterclaim;
 - (b) State enters into a business contract (it is exercising proprietary functions);
 - (c) When it would be inequitable for the State to invoke immunity;
 - (d) In eminent domain cases.

B.2 CONCEPTS

i. State

A community of persons, more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing a government to which a great body of the inhabitants render habitual obedience; a politically organized sovereign community independent of outside control bound by ties of nationhood, legally supreme within its territory, acting through a government functioning under a regime of law. [*Collector of Internal Revenue v. Campos Rueda*, G.R. No. 13250, October 29, 1971]

ii. Bases

Constitutional (Textual) Basis: Const. Art. XVI

Sec. 3. The State may not be sued without its consent.

International Law Basis:

“Par in parem non habet imperium”

Jurisprudential Basis:

- (1) **Positivist Theory** - There can be no legal right as against the authority that makes the laws on which the right depends. Also called the doctrine of **Royal Prerogative of Dishonesty**. [*Department of Agriculture v NLRC*, GR 104269, 11 November 1993]
- (2) **Sociological Theory** - If the State is amenable to suits, all its time would be spent defending itself from suits and this would prevent it from performing its other functions. [*Republic vs. Villasor* (1973)]

B.3. SUITS AGAINST THE STATE

When against the state

A suit is against the State regardless of who is named the defendant if:

- (1) It produces adverse consequences to the public treasury in terms of disbursement of public funds and loss of government property.
- (2) It cannot prosper unless the State has given its consent.

When not against the state

It was held that the suit is not against the State:

- (1) When the purpose of the suit is to compel an officer charged with the duty of making payments pursuant to an appropriation made by law in favor of the plaintiff to make such payment, since the suit is intended to compel *performance of a ministerial duty*. [*Begoso v. PVA* (1970)]
- (2) When from the allegations in the complaint, it is clear that the respondent is a public officer sued in a *private capacity*;
- (3) When the action is not *in personam* with the government as the named defendant, but an action *in rem* that does not name the government in particular.

Express consent

Effected only by the will of the legislature through the medium of a duly enacted statute; may be embodied either in a *general law* or a *special law*:

General Law

Authorizes any person who meets the conditions stated in the law to sue the government in accordance with the procedure in the law; e.g.

(1) Money claims arising from contract express or implied

Act No. 3083

An Act Defining the Conditions under which the Government of the Philippines may be Sued.

Sec. 1. Subject to the provisions of this Act, the Government of the Philippines hereby consents and submits to be sued upon any moneyed claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties.

Sec. 2. A person desiring to avail himself of the privilege herein conferred must show that he has presented his claim to the Commission on Audit and that the latter did not decide the same within two months from the date of its presentation. xxx

Sec. 5. When the Government of the Philippines is plaintiff in an action instituted in any court of original jurisdiction, the defendant shall have the right to assert therein, by way of set-off or counterclaim in a similar action between private parties. xxx

(2) Torts**(a) Liability of local government units**

Provinces, cities and municipalities shall be liable for damages for the death or injuries suffered by any person by reason of the defective conditions of roads, streets, public buildings and other public works

under their control and supervision.
[Art. 2189, CC]

(b) Vicarious liability for special agents
[Art. 2180(6), CC]

The Government is only liable for the acts of its agents, officers and employees, when they act as special agents within the meaning of the provision.

Special Agent - One who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office if he is a special official. [Merritt v. Gov't of the Philippine Islands, (1916)] One who performs his regular functions, even if he is called a "special agent", is not a special agent within the context of Government liability [USA v Guinto, GR 76607, 26 February 1990]

Special Law - may come in the form of a *private bill* authorizing a named individual to bring suit on a special claim

Implied consent [E-P-I-C]

- (1) In instances when the State takes private property for public use or purpose (eminent domain)
- (2) When the State enters into a business contract (*in jure gestionis* or proprietary functions)
- (3) When it would be inequitable for the State to invoke its immunity.
- (4) If the government files a complaint, defendant may file a counterclaim against it. When the state files a complaint, suability will result only where the government is claiming affirmative relief from the defendant.

B.4. SPECIFIC RULES

Suits against Government Agencies – Depends on whether the agency is *incorporated* (i.e. there is a separate charter) or *unincorporated* (i.e. no separate personality).

- (1) **Incorporated** – If the charter provides that the agency can sue, then the suit will

lie. The provision in the charter constitutes express consent. [*See SSS v. Court of Appeals, 120 SCRA 707 (1983)*]

- (2) **Unincorporated** – There must be an inquiry unto the principal functions of government.
- (a) **If governmental:** NO suit without consent. [*Bureau of Printing v. Bureau of Printing Employees Association (1961)*]
- (b) **If proprietary:** Suit will lie, because when the state engages in principally proprietary functions, it descends to the level of a private individual, and may, therefore be vulnerable to suit. [*Civil Aeronautics Administration v. Court of Appeals (1988)*]. State may only be liable for proprietary acts (*jure gestionis*) and not for sovereign acts (*jure imperii*).

Type	Function	Rule
Incorporated	Governmental or proprietary	CAN be sued IF charter allows
Unincorporated	Governmental	CANNOT be sued unless consent is given
	Proprietary	CAN be sued

B.5. SUITS AGAINST PUBLIC OFFICERS

General Rule – The doctrine of state immunity also applies to complaints filed against officials of the State for acts performed by them in the discharge of their duties within the scope of their authority.

Exception: The doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his (1) private and personal capacity as an ordinary citizen, for (2) acts without authority or in excess of the powers vested in him. [*Lansang vs CA (2000)*]

Note: Acts done without authority are not acts of the State

B.6. EXCEPTIONS TO PRIOR CONSENT RULE

Case law provides that the following are well-recognized exceptions when the state/public officer MAY be sued without prior consent:

- (1) To compel him to do an act required by law;
- (2) To restrain him from enforcing an act claimed to be unconstitutional;
- (3) To compel the payment of damages from an already appropriated assurance fund or to refund tax over-payments from a fund already available for the purpose;
- (4) To secure a judgment that the officer impleaded may satisfy by himself without the State having to do a positive act to assist him;
- (5) Where the government itself has violated its own laws. [*Sanders v. Veridiano II, G.R. No. L-46930 (1988)*]

B.7. SCOPE OF CONSENT

Consent to be sued is not concession of liability: Suability depends on the consent of the state to be sued, and liability on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable, but it can never be held liable if it does not first consent to be sued. *When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove that it is liable.* [*United States of America v. Guinto, 182 SCRA 644 (1990)*]

C. GENERAL PRINCIPLES AND POLICIES

[ART. II – DECLARATION OF PRINCIPLES AND STATE POLICIES]

Principles [sec.1-6]: Binding rules which must be observed in the conduct of government [Bernas]

- (1) The Philippines is a democratic and republican state [Sec. 1]

Sec. 1. The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.

The Philippines, under the Const., is not just a representative government but also shares some aspects of *direct democracy* such, for instance, as the “initiative and referendum” under Art. VI, Sec. 32 [Bernas]

- (2) Renunciation of war [Sec. 2]

Sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Only refers to wars of *aggression*, not defensive war

- (3) Adoption of generally-accepted principles of international law [Sec. 2, *supra*]

Under the 1987 Constitution, international law can become part of the sphere of domestic law either by **transformation** or **incorporation**.

Transformation - requires that an international law be transformed into a domestic law through a constitutional mechanism such as local legislation.

Incorporation - when, by mere constitutional declaration, international

law is deemed to have the force of domestic law.

[*Pharmaceutical and Health Care Assoc. of the Philippines v. Duque III*, G.R. No. 173034 (2007)]

Generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations.

"Generally accepted principles of international law" - norms of general or customary international law which are binding on all states, i.e,

- (a) renunciation of war as an instrument of national policy,
- (b) the principle of sovereign immunity,
- (c) a person's right to life, liberty and due process, and
- (d) pacta sunt servanda (international agreements must be performed in good faith)

The classical formulation in international law sees those **customary rules accepted as binding result from the combination of two elements**:

- (e) the **established, widespread, and consistent practice on the part of States**; and
- (f) a **psychological element** known as the *opinion juris sive necessitates* (opinion as to law or necessity) [*Mijares v. Rañada*, G.R. No. 139325 (2005)].

International customary rules are accepted as binding as a result from the combination of two elements:

- (i) the established, widespread, and consistent practice on the part of States; and
- (ii) a psychological element known as the *opinion juris sive necessitates* (opinion as to law or necessity).

[*Poe-Llamanzares v. COMELEC*, G.R. No. 221697 (2016). *N.B. Outside the bar coverage.*]

(4) Adherence to a policy of peace, freedom, and amity with all nations [Sec. 2, *supra*]

(5) Civilian supremacy [Sec. 3]

Sec. 3. Civilian authority is, at all times, supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and the integrity of the national territory.

Civilian authority (Section 3, Article II) is not defeated in a joint task force between the PNP and Marines for the enforcement of law and order in Metro Manila as long as control is left to the PNP. [*IBP v. Zamora (2000)*]

(6) Role of the armed forces [Sec. 3, *supra*]

(a) Protector of the people and the State

(b) Secure the sovereignty of the State and the integrity of the national territory

(7) Compulsory military and civil service [Sec. 4]

Sec. 4. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal, military or civil service.

N.B. Under conditions provided by law

(8) Maintenance of peace and order, promotion of general welfare [Sec. 5]

Sec. 5. The maintenance of peace and order, the protection of life, liberty, and property, and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

(9) Recognition of hierarchy of rights [*Bernas; Sec. 5, supra*]

(a) Life

(b) Liberty

(c) Property

(10) Separation of Church and State [Sec. 6]

Sec. 6. The separation of Church and State shall be inviolable.

Policies [sec. 7-28]: Guidelines for the orientation of the state [*Bernas*]

(1) Independent foreign policy [Sec. 7]

Sec. 7. The State shall pursue an independent foreign policy. In its relations with other states, the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination.

(2) Freedom from nuclear weapons [Sec. 8]

Sec. 8. The Philippines, consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

(3) Promote a just and dynamic social order [Sec.9]

Sec. 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

(4) Promote social justice in all phases of national development [Sec. 10]

Sec. 10. The State shall promote social justice in all phases of national development.

(5) Personal dignity and human rights [Sec. 11]

Sec. 11. The State values the dignity of every human person and guarantees full respect for human rights.

- (6) Family as basic social institution [Sec. 12] and natural and primary right and duty of parents in the rearing of the youth [Id.]

Sec. 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

The right and duty referred to here is *primary, not exclusive*. The State as *parens patriae* has an inherent right to aid parents in the moral development of the youth. Hence, the provision in the RH Law mandating the teaching of age- and development-appropriate reproductive health education is not *per se* unconstitutional; a ruling on its constitutionality would be premature absent an actual curriculum formulated by the Dept. of Education. [*Imbong v. Ochoa*, G.R. No. 204819, Apr. 8, 2014, on the constitutionality of the RH Law]

- (7) Protection of the life of the mother and the life of the unborn from conception [Sec. 12, *supra*]

The question of when life begins is a scientific and medical issue that should not be decided [in the RH petitions] without proper hearing and evidence. [*Imbong v. Ochoa*, *supra*]

- (8) Vital role of youth in nation-building [Sec. 13]

Sec. 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

- (9) Role of women in nation-building [Sec. 14]

Sec. 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

- (10) Fundamental equality before the law of women and men [Sec. 14, *supra*]

- (11) Right to health [Sec. 15, *Imbong v. Ochoa*, *supra*]

Sec. 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

- (12) Right to a balanced and healthful ecology [Sec. 16, *Oposa v. Factoran*]

Sec. 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

- (13) Priority to education, science and technology, arts, culture, and sports [Sec. 17]

Sec. 17. The State shall give priority to education, science and technology, arts, culture, and sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development.

- (14) Labor as a primary social economic force [Sec. 18]

Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

- (15) Self-reliant and independent national economy [Sec. 19]

Sec. 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

(16) Role of private sector [Sec. 20]

Sec. 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

(17) Comprehensive rural development and agrarian reform [Sec. 21]

Sec. 21. The State shall promote comprehensive rural development and agrarian reform.

(18) Recognition and promotion of rights of indigenous cultural communities [Sec. 22]

Sec. 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

(19) Community-based, sectoral organizations [Sec.23]

Sec. 23. The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation.

(20) Role of communication and information in nation-building [Sec.24]

Sec. 24. The State recognizes the vital role of communication and information in nation-building.

(21) Autonomy of local governments [Sec. 25]

Sec. 25. The State shall ensure the autonomy of local governments.

(22) Equal access for public service and prohibition of political dynasties [Sec. 26]

Sec. 26. The State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.

The state policy against political dynasties is not self-executing. It does not provide a

judicially enforceable constitutional right but merely specifies a guideline for legislative or executive action. [*Belgica v. Ochoa*, G.R. No. 208566, Nov. 19, 2013]

(23) Honesty and integrity in public service [Sec. 27]

Sec. 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

(24) Policy of full public disclosure [Sec. 28]

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

See discussion, vis-à-vis the right to information (Art. III, Sec. 7) in the Constitutional Law II reviewer.

D. SEPARATION OF POWERS

The government established by the Constitution follows fundamentally the theory of separation of powers into the legislative, the executive and the judicial [*Angara v. Electoral Commission*, G.R. No. 45081, July 15, 1936].

Separation of powers is *not expressly provided* for in the Constitution. But it *obtains from actual division* [found in Sec. 1 of Articles VI, VII, and VIII]. Each department has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. [*Angara v. Electoral Commission*, *supra*]

Separation of powers is founded on the belief that, by establishing equilibrium among the three power holders, harmony will result, power will not be concentrated and thus tyranny will be avoided [*Bernas*].

The separation of powers is a fundamental principle in our system of government. Any system that is violative of this principle is unconstitutional and void. [See *Belgica v.*

Ochoa, G.R. No. 208566, Nov. 19, 2013, on the unconstitutionality of the PDAF]

The Pork Barrel System violates the separation of powers because it is a form of post-enactment authority in the implementation or enforcement of the budget.

- (1) By giving individual legislators the (a) power to determine projects *after* the General Appropriations Act (GAA) is passed, and, (b) through congressional committees, authority in the areas of fund release and realignment, the system *encroaches* on the Executive's power to implement the law.
- (2) Furthermore, identification of a project by a legislator being a *mandatory requirement* before his PDAF can be tapped as a source of funds, his act becomes *indispensable* in the entire budget execution process. [*Belgica, supra*]

E. CHECKS AND BALANCES

It does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government. [*Angara v. Electoral Commission*]

Congressional oversight is not *per se* violative, but is *integral*, to separation of powers. However, for a post-enactment congressional measure to be valid, it must be limited to:

- (1) **Scrutiny** - Congress' power of *appropriation*, i.e. budget hearings, and power of *confirmation*
- (2) **Investigation and monitoring of implementation of laws** – using its power to conduct inquiries in aid of legislation. [*Abakada Guro Partylist v. Purisima, G.R. No. 166715, August 14, 2008*]

A **legislative veto**, i.e. statutory provision (which may take the form of a *congressional oversight committee*) that requires the President or an agency to submit the proposed implementing rules and regulations of a law to Congress for approval, is unconstitutional. It encroaches on:

- (1) The **executive** - it allows Congress to take a direct role in the enforcement of its laws;
- (2) The **judiciary** - administrative issuances enjoy a presumption of validity, and only the courts may decide whether or not they conform to statutes or the Constitution. [*Abakada Guro Partylist v. Purisima, G.R. No. 166715, August 14, 2008*]

The Pork Barrel system is unconstitutional, among others, because it violates the system of checks and balances.

- (1) **It deprives the president of his item-veto power.** As *lump-sum appropriations*, the actual projects under each congressman's PDAF are determined (by the congressman) *only after* the GAA is passed. The president, then, would not be able to discern whether or not he should veto the appropriation.
- (2) **It has a detrimental effect on Congressional Oversight.** Because legislators effectively intervene in project implementation, it becomes difficult for them to exercise their (valid) post-enactment role of *scrutinizing*, *investigating*, or *monitoring* the implementation of the law, when they are no longer *disinterested observers*. [*Belgica, supra*]

Section 8(2) of RA No. 6770, providing that the President may remove a Deputy Ombudsman, is unconstitutional. Subjecting the Deputy Ombudsman to discipline and removal by the President, whose own alter egos and officials in the Executive department are subject to the Ombudsman's disciplinary authority, cannot but seriously place at risk the independence of the Office of the Ombudsman itself. Section 8(2) of R.A. No. 6770 intruded upon the constitutionally-

granted independence of the Office of the Ombudsman. By so doing, the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize. What is true for the Ombudsman must equally and necessarily be true for her Deputies who act as agents of the Ombudsman in the performance of their duties. The Ombudsman can hardly be expected to place her complete trust in her subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office. [*Gonzales III v. Office of the President*, G.R. No. 196231, Jan. 28, 2014]

F. DELEGATION OF POWERS

F.1. RULE OF NON-DELEGATION OF LEGISLATIVE POWER

Principle: *Delegata potestas non potest delegari* – What has been delegated can no longer be delegated.

Rationale: Since the powers of the government have been delegated to them by the people, who possess original sovereignty, these powers cannot be further delegated by the different government departments to some other branch or instrumentality of the government.

General Rule: Only Congress (as a body) may exercise legislative power

Exceptions:

(1) **Delegated legislative power to local governments** – Local governments, as an *immemorial practice*, may be allowed to legislate on purely local matters. [*See Rubi v. Provincial Board* (1919), cited in *Belgica, supra*. See also *Const., Art. IX, Sec. 9*, explicitly mentioning “legislative bodies of local governments;” and *Sec. 20* providing for the coverage of legislative powers delegated to autonomous regions via the latter’s organic acts.]

(2) Constitutionally-grafted Excep-tions

(a) *Emergency power* delegated to the Executive during State of War or National Emergency [*Const., art. VI, sec. 23(2)*]

(b) Certain *taxing powers* of the President [*Const., art. VI, sec. 28(2)*]. The Congress may authorize the President to fix, within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government.

(3) **The extent reserved to the people** by the provision on initiative and referendum [*Const. Art. VI, Sec. 1*]

N.B. *Subordinate legislation* made by administrative agencies – The principle of non-delegability *should* not be confused with the *delegated rule-making* authority of implementing agencies. [*Belgica, supra*] Strictly speaking, what is delegate is not “law-making” power, but *rule-making* power, limited to (a) filling up the details of the law or (b) ascertaining facts to bring the law into actual operation.

Traditional/Simplified Formulation: Who may exercise legislative powers:

General Rule: Congress only

Exceptions:

- (1) Delegated power to local governments
- (2) Delegated emergency powers of the president
- (3) Delegated taxing powers of the president
- (4) Subordinate legislation of administrative agencies
- (5) Power reserved to people for initiative and referendum

F.2. TESTS FOR VALID DELEGATION

Rule – There is a valid delegation of legislative power when:

- (1) **Completeness test** – The law sets forth the policy to be executed, carried out, or implemented by the delegate (*Abakada, supra*), such that there is nothing left for the delegate to do but to enforce the law [*Pelaez v. Auditor General* (1965)]; AND
- (2) **Sufficient standard test** – The standard is sufficient if it defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. [*Edu v. Ericta*, 35 SCRA 481 (1970)]

N.B.: Acts which are purely legislative in character cannot be delegated to an administrative body (in contrast to the ascertainment of facts or the filing in of details which can be delegated to administrative agencies).

G. FORMS OF GOVERNMENT

G.1. DEFINITION

“Government of the Philippines” is defined as:

The corporate governmental entity through which the functions of government are exercised throughout the Philippines, including the various arms through which political authority is made effective in the Philippines, whether pertaining to:

- (a) the autonomous regions,
- (b) the provincial, city, municipal, or barangay subdivisions, or
- (c) other forms of local government. [Sec. 2(1), Bk. I, Administrative Code]

“Government” is that institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state or which are imposed upon the people forming that

society by those who possess the power or authority of prescribing them. [*US v. Dorr* (1903)]

G.2. AS TO THE EXISTENCE OR ABSENCE OF CONTROL

i. De jure

- (1) Has rightful title;
- (2) *But* has no power or control, either because this has been withdrawn from it, or because it has not yet actually entered into the exercise thereof. [*In re Letter of Associate Justice Puno*, (1992)]

ii. De facto

Government of fact, that is, it actually exercises power or control without legal title. [*Co Kim Cham v. Valdes*, (1945)]

- (1) **DE FACTO PROPER** – The government that gets possession and control of, or usurps, by force or by the voice of the majority, the rightful legal gov’t and maintains itself against the will of the latter.
- (2) **INDEPENDENT GOVERNMENT** – That established as an independent gov’t by the inhabitants of a country who rise in insurrection against the parent state.
- (3) That which is established and maintained by military forces who invade and occupy a territory of the enemy in the course of war, and which is denominated as a gov’t of paramount force, like the Second Republic established by the Japanese belligerent.

The legitimacy of the Aquino government is not a justiciable matter. It belongs to the realm of politics where only the people of the Philippines are the judge. And the people have made the judgment; they have accepted the government of President Corazon C. Aquino which is in effective control of the entire country so that it is not merely a de facto government but in fact and law a de jure government. Moreover the community of nations has recognized the legitimacy of the present government. All the eleven members of this Court as reorganized have sworn to uphold the fundamental law of the Republic under her government. (*In re Bermudez* (1986))

citing Lawyers League for a Better Philippines v. Aquino (1986)]

EDSA I vs. EDSA II

In fine, the legal distinction between EDSA People Power I and EDSA People Power II is clear. EDSA I involves the exercise of the people power of revolution which overthrew the whole government. EDSA II is *an exercise of people power of freedom of speech and freedom of assembly* to petition the government for redress of grievances which only affected the office of the President. EDSA I is extra-constitutional and the legitimacy of the new government that resulted from it cannot be the subject of judicial review, *while EDSA II is intra-constitutional and the resignation of the sitting President that it caused and the succession of the Vice President as President are subject to judicial review*. EDSA I presented a political question; EDSA II involved legal questions.

Even if the petitioner can prove that he did not resign, still, he cannot successfully claim that he is a President on leave on the ground that he is merely unable to govern temporarily. That claim has been laid to rest

by Congress and the decision that respondent Arroyo is the de jure president, made by a co-equal branch of government, cannot be reviewed by this Court. [*Estrada v. Desierto / Estrada v. Arroyo (2001)*]

G.3. AS TO CONCENTRATION OF POWERS

- i. **Presidential** – there is separation of executive and legislative branches of government
- ii. **Parliamentary** – There is a fusion of executive and legislative powers in the Parliament, although the actual exercise of the executive powers is vested on the Prime Minister. (De Leon)

G.4. AS TO CENTRALIZATION

- i. **Unitary** – One in which the control of the national and local affairs is exercised by the national and local government
- ii. **Federal** – one in which the powers of the government are divided between two sets of organs, one for national affairs and one for local affairs. [DE LEON]

III. Legislative Department

A. WHO MAY EXERCISE LEGISLATIVE POWER

Q: What is legislative power?

A: **Legislative power** is the authority to make laws and to alter and repeal them.

A.1. CONGRESS

Legislative power is vested in the Congress, which consists of a Senate and a House of Representatives. (Art. VI, Sec. 1) Grant of legislative power to Congress is *plenary*. Congress may legislate on any subject matter provided that constitutional limitations are observed.

A.2. REGIONAL/LOCAL LEGISLATIVE POWER

N.B. A regional assembly exists for the ARMM

A.3. PEOPLE'S INITIATIVE ON STATUTES

Legislative power is also vested in the people by the system of **initiative and referendum**. (Art. VI, Sec. 1) The power of initiative and referendum is the power of the people directly to "propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body." (Art. VI, Sec.32); The provision is not self-executing [*Santiago v. COMELEC*, 270 SCRA 106 (1997)];

RA 6735 – "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefore" – valid for (a) laws, (b) ordinances, and (c) resolutions, but NOT amendments to the Constitution [*Santiago, supra*]

Initiative

i. Local initiative; voter requirements

Region	Not less than X registered voters
Autonomous regions	2,000
Provinces	1,000
Municipalities	100
Barangays	50

Where to file – Regional Assembly, local legislative body, as the case may be. (Sec. 13, RA 6735)

ii. Limitations on local initiative

Cannot be exercised more than once a year; extends only to subjects or matters which are within the legal powers of the local legislative bodies to enact; and if at any time before the initiative is held, the local legislative body should adopt *in toto* the proposition presented, the initiative shall be cancelled. (Sec. 15, RA 6735)

Referendum – the power of the electorate to approve or reject legislation through an election called for that purpose (Sec. 3c, RA 6735)

Referendum: Classes

- (1) **Referendum on statutes** – petition to approve or reject an act or law, or part thereof, passed by Congress;
- (2) **Referendum on local laws** – legal process whereby the registered voters of the LGUs may approve, amend, or reject any ordinance enacted by the Sanggunian (Sec. 126, LGC)

Q: Is the power of to hold a referendum plenary?

A: No, the following cannot be the subject of an initiative or referendum petition –

- (1) No petition embracing more than one subject shall be submitted to the electorate;
- (2) Statutes involving emergency measures, the enactment of which is specifically vested in Congress by the Constitution, cannot be subject to referendum until 90

days after their effectivity. (Sec. 10, RA 6735)

A.4. THE PRESIDENT UNDER MARTIAL LAW OR IN A REVOLUTIONARY GOVERNMENT

Sec. 23. (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

(2) In times of war or other national emergency, the Congress may, by law, authorize the President, for a limited period and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof.

Congress may delegate legislative powers to the president in times of war or in other national emergency. [Bernas]

B. HOUSES OF CONGRESS

B.1. SENATE

See comparison below

B.2. HOUSE OF REPRESENTATIVES

i. Composition, qualifications, term of office

<i>Senate</i> (art. VI, sec. 2-4)	<i>House of Representatives</i> (art. VI, sec. 5-8)
Composition	
24 senators elected at large	Not more than 250 members, unless otherwise provided by law, consisting of: (3) District Representatives (4) Party-List Representatives
Qualifications	
(1) Natural-born citizen	(1) Natural-born citizens
(2) At least 35 years old on the day of the election	(2) At least 25 years old on the day of the election
(3) Able to read and write	(3) Able to read and write
(4) A registered voter	(4) Registered voter in the district he seeks to represent
(5) Resident of the Philippines for at least 2 years immediately preceding the day of the election	(5) A resident of the said district for at least 1 year immediately preceding the day of the election
Term of Office	
6 years	3 years
Term Limits	
2 consecutive terms	3 consecutive terms

ii. District representatives and questions of apportionment

District Representatives - Elected from legislative districts apportioned among the provinces, cities, and Metro Manila area.

Rules on Apportionment of Legislative Districts:

(1) Apportionment of legislative districts must be *by law* which could be a:

- (a) General Apportionment Law; or
- (b) Special Law (i.e. creation of new provinces)

Note: The power to apportion legislative districts is textually committed to Congress by the Constitution. Thus, it cannot be validly delegated to the ARMM Regional Assembly [*Sema v. COMELEC*, G.R. No. 177597, July 16, 2008]. Under the Constitution and the Local Gov. Code, apportionment and reapportionment do not require a plebiscite. [*Bagabuyo v. COMELEC*, 576 SCRA 290 (2008)]

(2) *Proportional representation* based on number of inhabitants

- (a) Each city with a population of at least 250,000 shall have at least 1 representative.
- (b) Each province, irrespective of the number of inhabitants, shall have at least 1 representative.

(3) Each legislative district shall comprise, as far as practicable, *contiguous, compact, and adjacent* territory. (N.B. Anti-gerrymandering provision)

(4) Re-apportionment by Congress within 3 years after the return of each *census*.

N.B. – “**Apportionment**”: The determination of the number of representatives which a State, county, or other subdivision may send to a legislative body; compare with “**reapportionment**”, i.e., Realignment or change in legislative districts brought about by changes in population and mandated by the constitutional requirement of equality of representation. (*Bagabuyo v COMELEC*);

iii. Party-list system

Party-List Representatives – shall constitute 20% of the total number of representatives, elected through a party-list system of registered national, regional, and sectoral parties or organizations

See Sectoral Representatives - For 3 consecutive terms from 2 February 1987, 1/2

of the party-list seats shall be allotted to sectoral representatives to be chosen by appointment or election, as may be provided by law. Until a law is passed, they are appointed by the President from a list of nominees by the respective sectors. [Art. XVIII, Sec. 7]

N.B. The party-list system is *not synonymous* with sectoral representation. [*Atong Paglaum v. COMELEC*, G.R. No. 203766, Apr. 3, 2013, citing 1986 Constitutional Commission Records]

Atong Paglaum Guidelines

(1) Three different parties or organizations may participate in the party-list system:

- (a) national;
- (b) regional;
- (c) or sectoral;

(2) *National and regional* parties or orgs *do not need* to (a) organize along sectoral lines, or (b) represent any “marginalized or underrepresented” sector;

(3) *Political parties* may participate in the party-list system *provided*:

- (a) they register under the party-list system;
- (b) they do not field candidates in legislative district elections.

(i) A party that participates in the legislative district elections may still participate in the party-list through a *sectoral wing*.

(ii) The sectoral wing can be part of the political party’s coalition, but the former must be registered independently in the party-list system.

(4) *Sectoral parties or orgs* may either be (a) “marginalized or underrepresented” (e.g. labor, peasant, fisherfolk); or (b) “lacking in well-defined political constituencies” (e.g. professionals, women, elderly, youth)

(5) The nominees of sectoral parties or orgs, of either type, must (a) *belong* to their respective sectors, or (b) have a *track*

record of advocacy for their respective sectors. Majority of the members of a sectoral party, of either type, must belong to the sector they represent.

- (6) National, regional, or sectoral parties or orgs shall not be disqualified if some of their nominees are disqualified, *provided* they have at least 1 nominee who remains qualified. [*Atong Paglaum, supra*]

Disqualifications and Qualifications

See R.A. 7941, An Act Providing For The Election Of Party-List Representatives Through The Party-List System, And Appropriating Funds Therefor

Disqualified Parties:

- (1) Religious Sects
- (2) Foreign Organizations
- (3) Advocating Violence or Unlawful Means
- (4) Receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes.
- (5) Violates or fails to comply with laws, rules or regulations relating to elections;
- (6) Declares untruthful statements in its petition;
- (7) Ceased to exist for at least one (1) year; or
- (8) Fails to participate in the last two (2) preceding elections or fails to obtain at least 2 per centum of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

Qualified Sectors:

N.B. This qualification applies only to *sectoral* parties. Participating national or regional parties need not fall under any of these sectors. [*See Atong Paglaum, supra*]

- (1) Labor
- (2) Peasant
- (3) Fisherfolk
- (4) Urban Poor
- (5) Indigenous Cultural Communities
- (6) Elderly
- (7) Handicapped
- (8) Women
- (9) Youth
- (10) Veterans
- (11) Overseas Workers
- (12) Professionals

Four parameters of the party-list system:

- (1) **20% Allocation:** 20% of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations.
- (2) **2% Threshold:** Garnering 2% of the total votes cast in the party-list elections guarantees a party-list organization one (1) seat.
- (3) **Additional Seats:** The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes.

N.B. The continued operation of the 2% threshold to the allocation of the additional seats is unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats.

- (4) **3-Seat Cap:** The three-seat cap is constitutional.

N.B. It is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not require absolute proportionality for the party-list system. [BANAT v. COMELEC, G.R. No. 179271, Jul. 8, 2009 *Resolution on the Motion for Clarificatory Judgment*]

Rules on Computation of Seats: Two-Round Allocation

Step 1: Compute total number of seats allocated for party-list representatives

Step 2: Rank all party-list candidates from highest to lowest based on the number of votes they garnered

Step 3: Compute for each party-list candidate's percentage of votes garnered *in relation* to the total number of votes cast for party-list candidates.

Step 4: Round 1 – Allocate one (1) seat each for party-list that garnered at least 2% of the total number of votes.

Step 5: Round 2 – Assign additional seats from the balance (i.e. total number of party-list seats *minus* Round 1 allocations) by:

- (a) Allocating one (1) seat for every whole integer (e.g. if a party garners 2.73% of the vote, assign it two [2] more seats; if 1.80%, assign it one [1] more seat); then
- (b) Allocating the remaining seats (i.e. total seats *minus* Round 1 and Round 2a allocations) to those next in rank until all seats are completely distributed.

Step 6: Apply the 3-Seat Cap, if necessary. [See BANAT v. COMELEC, *supra*]

C. LEGISLATIVE PRIVILEGES, INHIBITIONS, DISQUALIFICATIONS

C.1. PRIVILEGES

i. Salaries

The salaries of Senators and Representatives shall be determined by law; no increase in said compensation shall take effect until after the expiration of the full term of all the Members of the Senate and the House of Representatives approving such increase. [Art. VI, Sec. 10].

ii. Freedom from arrest

Sec. 11. A Senator or Member of the House of Representatives shall, in all offenses punishable by *not more than six years imprisonment*, be privileged from arrest while the Congress is in session. [...]

Preventive suspension is not a penalty. Order of suspension under R.A. 3019 (Anti-Graft and Corrupt Practices Act) is distinct from the power of Congress to discipline its own members, and did not exclude members of Congress from its operation. [Defensor-Santiago v. Sandiganbayan (2001)]

In *People v. Jalosjos*, G.R. No. 132875, February 3, 2000, the SC denied the request of Cong. Jalosjos that he be allowed to attend legislative sessions. The denial was premised on the following: (a) membership in Congress does not exempt an accused from statutes and rules which apply to validly incarcerated persons; (b) one rationale behind confinement is public self-defense; (c) it would amount to creation of a privileged class, without justification in reason; and (d) he was provided with an office in the New Bilibid Prison.

iii. Speech and debate clause

Sec. 11. [...] No Member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.

To come under the guarantee the speech or debate" must be one made "in Congress or in any committee thereof." Publication of an allegedly libelous letter is not covered by the privilege. [*Jimenez v. Cabangbang* (1966)]; the immunity, although absolute in its protection of the member of Congress against suits for libel, does not shield the member against the disciplinary authority of the Congress. [*Defensor-Santiago v. Pobre*, AC 7399, 25 August 2009]]

Q: What speech is covered under this provision?

A: Generally anything a member of Congress says in line with his legislative function. (*Jimenez v. Cabangbang*). In particular:

- (1) speeches made,
- (2) utterances,
- (3) bills signed, and
- (4) votes passed.

C.2. INHIBITIONS AND DISQUALIFICATIONS

- (1) May not hold any other office or employment in the government during his term without forfeiting his seat. [Art. VI, Sec. 13]

The provision refers to an *Incompatible Office*. Forfeiture of the seat in Congress shall be automatic upon the member's assumption of such office deemed incompatible. [*Adaza v. Pacana*, 135 SCRA 431 (1985)].

The office of the Philippine National Red Cross (PNRC) Chairman is not a government office or an office in a government-owned or controlled corporation for purposes of the prohibition in Section 13, Article VI. [*Liban v. Gordon*, G.R. No. 175352 (2009)] (N.B. The structure of the PNRC is *sui generis* being neither strictly private nor public in nature. [*Liban v. Gordon*, G.R. No. 175352 (2011)])

- (2) May not be appointed to any office created or whose emoluments were increased during the term for which he was elected. [Art. VI, Sec. 13]

The provision refers to a *Forbidden Office*. He cannot validly take the office even if he is willing to give up his seat.

- (3) *Shall not be financially interested*, directly or indirectly, in any contract with, or franchise or special privilege granted by the government during his term of office. [Art. VI, Sec. 14]
- (4) *Shall not intervene* in any matter before any office of the government when it is for his pecuniary benefit or where he may be called upon to act on account of his office. [Art. VI, Sec. 14]

The Pork Barrel System "runs afoul" of Art. VI, Sec. 14 because in "allowing legislators to intervene in the various phases of project implementation – a matter before another office of government – [the Pork Barrel] renders them susceptible to taking undue advantage of their own office." [*Belgica, supra*]

- (5) *Cannot personally appear* as counsel before any court, electoral tribunal, quasi-judicial and administrative bodies during his term of office. [Art. VI, Sec. 14]

N.B. Distinguish **ineligible office** (for elective officials) where the appointment is invalid since it is contrary to the Constitution, regardless if the official resigns or not (Sec 7, Art IX – B), and an **incompatible office** (for members of Congress and the Senate) where the appointment is valid and the official may hold the appointed office provided that he/she resigns his/her current office.

C.3. DUTY TO DISCLOSE

(1) SALN: Art. XI, Sec. 17

Sec. 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

What: Declaration under oath of assets, liabilities, and net worth

When:

- (a) Upon assumption of office
- (b) As often as may be required by law

Who must declare:

- (a) President
- (c) Vice-President
- (d) Members of the Cabinet
- (e) Members of Congress
- (f) Members of the Supreme Court
- (g) Members of the Constitutional Commissions and other constitutional offices
- (h) Officers of the Armed Forces with general or flag rank [Art. XI, Sec. 17]

(2) Financial and business interests: Members must make full disclosure upon assumption of office [Art. VI, Sec. 12]

Sec. 12. All Members of the Senate and the House of Representatives shall, upon assumption of office, make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.

(3) Potential conflicts of interest: Members must notify House, if conflict arises from the *filing* of a proposed legislation which they *authored*. [Id.]

(4) Amounts paid to/expenses incurred by each member: To be reported annually by the COA. [Art. VI, Sec. 20]

Sec. 20. The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses for each Member.

D. QUORUM AND VOTING MAJORITIES

D.1. QUORUM

Majority of *each House* shall constitute a quorum, although a smaller number may adjourn from day to day and may compel the attendance of absent members.

In computing a quorum, members who are outside the country, thus outside of each House's coercive jurisdiction, are not included.

"Majority" refers to the *number of members within the "jurisdiction" of the Congress* (those it can order arrested for the purpose of questioning). In this case, one Senator was out of the Philippines which is not within the "jurisdiction" of the Senate, so that the working majority was 23 Senators.

There is a difference between a majority of "all members of the House" and a majority of "the House", the latter requiring less number than the first. Therefore, an absolute majority (12) of all members of the Senate less one (23) constitutes constitutional majority of the Senate for the purpose of the quorum. [Avelino v. Cuenco, (1949)]

D.2. VOTING MAJORITIES

Doctrine of Shifting Majority – For each House of Congress to pass a bill, only the votes of the majority of those present in the session, there being a quorum, is required.

Exceptions to Doctrine of Shifting Majority:

- (1) **Votes where requirement is based on "ALL THE MEMBERS OF CONGRESS"** – requirement is based on the entire composition of a House or Congress (in its entirety), regardless of the number of Members present or absent

Action	Vote Required (all members)	Houses voting	Basis
Override presidential veto	2/3	Separately (House where bill originated votes first)	Art. VI, Sec. 27(1)
Grant of tax exemptions	Majority	(Silent)	Art. VI, Sec. 27(4)
Elect President in case of tie	Majority	Separately	Art. VII, Sec. 4, par. 5
Confirm appointment of VP	Majority	Separately	Art. VII, Sec. 9
Revoke or extend (a) Martial Law or (b) suspension of writ of Habeas Corpus	Majority	Jointly	Art. VII, Sec. 18
Confirm amnesty grant	Majority	(Silent)	Art. VII, Sec. 19, par. 2
Submit question of calling a Const. Convention to the electorate	Majority	(Silent)	Art. XVII, Sec. 3
Call for Const. Convention	2/3	Prevailing view: by default, houses vote separately (because Congress is bicameral)	Art. XVII, Sec. 3
Propose amendments as Const. Assembly	3/4		Art. XVII, Sec. 1(1)

(2) Other Special Cases, i.e. NOT out of all members

Action	Vote Required	Basis
Determine President's disability	2/3 of both Houses, voting separately	Art. VII, Sec. 11, par. 4
Declaring a State of War	2/3 of both Houses (in joint session), voting separately	Art. VI, Sec. 23(1)

E. DISCIPLINE OF MEMBERS

Each house may punish its members for disorderly behavior, and with the concurrence of 2/3 of ALL its members, with: [SED-FIC]

- (1) Ssuspension (shall not exceed 60 days)
- (2) Expulsion

Other disciplinary measures:

- (1) Deletion of unparliamentary remarks from the record
- (2) Fine
- (3) Imprisonment
- (4) Censure

The suspension contemplated in the Constitution is different from the suspension prescribed in the Anti-Graft and Corrupt Practices Act (RA 3019). The former is punitive in nature while the latter is *preventive*. [*Defensor-Santiago v. Sandiganbayan*, G.R. No. 118364, August 10, 1995].

F. ELECTORAL TRIBUNAL AND THE COMMISSION ON APPOINTMENTS

ELECTORAL TRIBUNALS

Art., VI, Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

Two Types

- (1) Senate Electoral Tribunal (SET)
- (2) House Electoral Tribunal (HRET)

N.B. There is a Presidential Electoral Tribunal (PET), but it is governed by different provisions.

The tribunals which have jurisdiction over the question of the qualifications of the President, the Vice-President, Senators and the Members of the House of Representatives was made clear by the Constitution. There is no such provision for candidates for these positions. [*Poe-Llamanzares v. COMELEC*, G.R. No. 221697 (2016)] (*N.B.* Outside of the bar coverage)

Composition

- (1) 3 Supreme Court justices, designated by Chief Justice; Senior Justice in the Electoral Tribunal shall be its Chairman
- (2) 6 members of the Senate or House, as the case may be, chosen on the basis of proportional representation from parties

Composition Rules

- (1) The ET shall be constituted within 30 days after the Senate and the House shall have been organized with the election of the President and the Speaker. [Sec. 19]
- (2) Members chosen enjoy *security of tenure* and cannot be removed by mere change of party affiliation. (*Bondoc v. Pineda*, 201 SCRA 793).

Valid grounds/just cause for termination of membership to the tribunal:

- (1) Expiration of Congressional term of office;
- (2) Death or permanent disability;
- (3) Resignation from political party which one represents in the tribunal;
- (4) Removal from office for other valid reasons.

Note: Disloyalty to party and breach of party discipline are not valid grounds for the expulsion of a member of the tribunal. [Bondoc, supra]

F.1. NATURE

Jurisdiction: sole judge of all *contests* relating to the election, returns, and qualifications of their respective members.

When does it acquire jurisdiction:

Traditional formulation: ET has jurisdiction only (1) when there is an election contest, and (2) only after the proclamation of a candidate. [*Lazatin v. HRET* (1988)]

In the absence of election contest, and before proclamation, jurisdiction remains with COMELEC. [*Id.*] But the proclamation of a congressional candidate following the election divests the COMELEC of jurisdiction over [...] the proclaimed representative in favor of the HRET. [*Tañada v. COMELEC*, G.R. No. 207199, Oct. 22, 2013]

But see Ongsiako-Reyes v. COMELEC (G.R. No. 207264, Jun. 25, 2013) where the Court held that an Electoral Tribunal acquires jurisdiction only after (1) a petition is filed before it, and (2) a candidate is already *considered a member* of the House.

To be considered a *member*, in turn, there must be a concurrence of the following: (1) a *valid proclamation*; (2) a *proper oath (a) before the Speaker and (b) in open session*; and (3) *assumption of office*. [*Id.*]

The Court in *Ongsiako-Reyes* clarified that the doctrine that “once a proclamation has been made, COMELEC’s jurisdiction is already lost [...] and the HRET’s own jurisdiction begins” *only* applies in the context of a candidate who has not only been *proclaimed* and *sworn in*, but has also *assumed* office. [*Id.*]

Election Contest - one where a defeated candidate challenges the qualification and claims for himself the seat of a proclaimed winner.

Supreme Court has jurisdiction over the Electoral Commission for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as “the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly.” [*Angara v. Electoral Commission* (1936)]

N.B.: Constitution mandates that the HRET “shall be the sole judge of all contests relating to the election, returns and qualifications” of its members. By employing the word “sole,” the Constitution is emphatic that the jurisdiction of the HRET in the adjudication of election contests involving its members is exclusive and exhaustive. Its exercise of power is intended to be its own — full, complete and unimpaired. [*Duenas Jr. v. HRET*, G.R. No. 185401, (2009)]

Independence of the Electoral Tribunals

Since the ET’s are independent constitutional bodies, independent even of the respective House, neither Congress nor the Courts may interfere with procedural matters relating to the functions of the ET’s. [*Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, Nov. 23, 2010]

The HRET was created to function as a *nonpartisan court* although two-thirds of its members are politicians.

To be able to exercise exclusive jurisdiction, the House Electoral Tribunal must be

independent. Its jurisdiction to hear and decide congressional election contests is not to be shared by it with the Legislature nor with the courts. "The Electoral Commission is a body separate from and independent of the legislature and though not a power in the tripartite scheme of government, it is to all intents and purposes, when acting within the limits of its authority, an independent organ; while composed of a majority of members of the legislature it is a body separate from and independent of the legislature. [*Bondoc v. Pineda, (1991)*]

F.2. POWERS

As constitutional creations invested with necessary power, the Electoral Tribunals are, in the exercise of their functions independent organs — independent of Congress and the Supreme Court. The power granted to HRET by the Constitution is intended to be as *complete and unimpaired* as if it had remained originally in the legislature [*Co v. HRET (1991) citing Angara vs. Electoral Commission (1936)*].

Judicial Review of Decisions of Electoral Tribunals

With the Supreme Court *only* insofar as the decision or resolution was rendered:

- (1) Without or in excess of jurisdiction; or
- (2) With grave abuse of discretion tantamount to denial of due process.

COMMISSION ON APPOINTMENTS

Art. VI, Sec. 18. There shall be a Commission on Appointments consisting of the President of the Senate, as ex officio Chairman, twelve Senators, and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein. The chairman of the Commission shall not vote, except in case of a tie. The Commission shall act on all appointments submitted to it within thirty session days of the Congress from their submission. The Commission shall rule by a majority vote of all the Members.

Composition

- (1) Senate President as ex-officio chairman (shall not vote except in case of a tie)
- (2) 12 Senators
- (3) 12 Members of the HOR

The CA shall be constituted within 30 days after the Senate and the House of Representative shall have been organized with the election of the President and the Speaker. [*Sec. 19*]

The CA shall act on all appointments within 30 session days from their submission to Congress.

The CA shall rule by a *majority vote* of all its members.

It is NOT mandatory to elect 12 Senators to the Commission before it can discharge its functions. What the Constitution requires is at least a majority of the membership. [*Guingona v. Gonzales, 214 SCRA 789 (1992)*].

The power to approve or disapprove appointments is conferred on the CA as a body and not on the individual members. [*Pacete v. Secretary (1971)*]

Rule on Proportional Representation – The 12 Senators and 12 Representatives are elected on the basis of proportional representation from the political parties and party-list organizations.

HOR has authority to change its representation in the Commission on Appointments to reflect at any time the changes that may transpire in the political alignments of its membership. It is understood that such changes in membership must be *permanent* and do not include the temporary alliances or factional divisions not involving severance of political loyalties or formal disaffiliation and permanent shifts of allegiance from one political party to another. [*Daza v. Singson (1989)*]

The provision of Section 18 on *proportional representation is mandatory in character* and does not leave any discretion to the majority party in the Senate to disobey or disregard the rule on proportional representation.

By requiring a proportional representation in the Commission on Appointments, sec. 18 in effect works as a *check on the majority* party in the Senate and helps to maintain the balance of power. No party can claim more than what it is entitled to under such rule. [*Guingona v. Gonzales* (1993)]

Meetings

- (1) CA shall meet only while Congress is in session.
- (2) Meetings are held either (a) at the call of the Chairman or (b) by a majority of all its members.

Note: Since the Commission on Appointments is also an independent constitutional body, its rules of procedure are also outside the scope of congressional powers as well as that of the judiciary.

Jurisdiction

- (1) CA shall confirm the appointments by the President with respect to the following positions:
 - (a) Heads of Executive departments (except if it is the Vice-President who is appointed to a cabinet position, as this needs no confirmation);
 - (b) Ambassadors, other public ministers or consuls;
 - (c) Officers of the AFP from the rank of Colonel or Naval Captain;
 - (d) Other officers whose appointments are vested in him by the Constitution (e.g. members of constitutional commissions); [*Sarmiento v. Mison* (1987)]
- (2) Congress cannot require that the appointment of a person to an office created by law shall be subject to CA confirmation.

Appointments extended by the President to the above-mentioned positions while Congress is *not* in session (ad-interim appointments) shall only be effective:

- (1) Until disapproval by the Commission on Appointments; OR

- (2) Until the next adjournment of Congress.

G. POWERS OF CONGRESS

G.1. INHERENT POWERS

These are inherent powers of the State which are reposed, under the Constitution, in Congress.

- (1) Police Power
 - (a) Make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances as they shall judge for the good and welfare of the constituents.
 - (b) Includes maintenance of peace and order, protection of life, liberty and property and the promotion of general welfare.
- (2) Power of Taxation
- (3) Power of Eminent Domain
- (4) Contempt power

G.2. LEGISLATIVE [ATE-M-FEAR-A]

- (1) Appropriation
- (2) Taxation
- (3) Expropriation
- (4) Authority to make, frame, enact, amend, and repeal laws [M-FEAR]
- (5) Ancillary powers (e.g. conduct inquiry and punish for contempt [See *Arnault v. Nazareno*, 87 Phil. 29 (1950)])

i. Legislative inquiries and the oversight functions

Requisites of Legislative Inquiries:

- (1) Must be in aid of legislation
- (2) In accordance with duly published rules of procedure
- (3) Right of persons appearing in or affected by such inquiries shall be respected

Comparison between Legislative Inquiries and Question Hour [See also *Senate v. Ermita* (2006)]

<i>Legislative Inquiries</i>	<i>Question Hour</i>
Constitutional Provision	
Art. VI, Sec. 21	Art. VI, Sec. 22
Topic	
In aid of legislation	On any matter pertaining to the subject's department
Persons Subjected	
Any person upon subpoena	Heads of departments only
Appearance of Exec. Officials	
Appearance of executive officials generally mandatory	Appearance of executive officials <i>via request</i>

The mere filing of a criminal or an administrative complaint before a court or quasi-judicial body should not automatically bar the conduct of legislative inquiry. (*Standard Chartered Bank v. Senate Committee on Banks*, G.R. No. 167173, December 27, 2007)

Additional limitation: Executive Privilege

Categories of congressional oversight functions

- (1) **Scrutiny:** Passive inquiry, the primary purpose of which is to determine economy and efficiency of the operation of government activities. In the exercise of legislative scrutiny, Congress may request information and report from the other branches of government. It can give recommendations or pass resolutions for consideration of the agency involved.
- (2) **Congressional investigation:** More intense digging of facts, compared to scrutiny. Power of investigation recognized by art. VI, sec. 21.
- (3) **Legislative supervision (Legislative Veto):** Most encompassing form. Connotes a continuing and informed awareness on the part of a congressional committee regarding executive

operations in a given administrative area. Allows Congress to scrutinize the exercise of delegated law-making authority, and permits Congress to retain part of that delegated authority. Through this, Congress exercises supervision over the executive agencies.

N.B. Legislative supervision is NOT allowed under the Constitution. (*Abakada Guro Partylist v. Purisima*, G.R. No. 166715, August 14, 2008) See also discussion in Checks and Balances, above.

ii. Bicameral conference committee

Ways of passing bills:

- (1) **Jointly** - in a joint session; required by the Constitution in special and specific cases
- (2) **Separately** - each house takes up the bill on its own
 - (a) **Simultaneously** - houses take up a bill at the same time
 - (b) **Sequentially** - bill originates from one house and, upon proper passage, is transmitted to the other house for the latter's own passage. In case of conflict between the two houses' versions, a *bicameral conference committee* is organized.

Bicameral Conference Committee (BCC):

- (1) Composed of *equal number* of members from the Senate and the HOR
- (2) Makes recommendations to houses on how to *reconcile* conflicting provisions/versions
- (3) BCC members are usually granted blanket authority to negotiate/reconcile the bills.
- (4) At the end of the process, the BCC comes up with a *Conference Committee Report*, which is then submitted to the respective chambers for approval. Upon approval, the bill may be engrossed.

The Bicam report need not pass through three readings. The Bicam may also include entirely new provisions and substitutions.

[See *Tolentino v. Sec. of Finance* (1994), *Phil. Judges Association v. Prado* (1993)]

G.R. No. 196271, Oct. 11, 2011, citing Tolentino v. Secretary of Finance

Enrolled bill doctrine –The (a) signing of a bill by the Speaker of the House and the President of the Senate, and the (b) certification by the secretaries of both Houses of Congress that it was passed, are conclusive of its due enactment.

Note: While *Tolentino v. Sec. of Finance* does NOT hold that the enrolled bill embodies a conclusive presumption, “where there is no evidence to the contrary, the Court will respect the certification of the presiding officers of both Houses that a bill has been duly passed.” [*Arroyo v. De Venecia*, 277 SCRA 278 (1997)]

iii. Limitations on legislative power

Formal/Procedural Limitations

Prescribes manner of passing bills and form they should take.

- (1) *Rider clause*: every bill passed by the Congress shall embrace only one subject which shall be expressed in the title. [Art. VI, Sec. 26(1)]

The title is not required to be an index of the contents of the bill. It is sufficient compliance if the title expresses: (1) the general subject and (2) all the provisions of the statute are germane to that subject. [*Tio v. Videogram Regulatory Commission*, 151 SCRA 208 (1987)]

- (2) No bill passed by either house shall become law unless it has passed 3 readings on separate days. [Art. VI, Sec. 26(2)]
- (3) Printed copies in its final form must have been distributed to its members 3 days before the passage of the bill. (Art. VI, Sec. 26[2])

Exception: President certifies to the necessity of its immediate enactment to meet a public calamity or emergency

Presidential certification dispenses with the (1) printing requirement and (2) readings on separate days requirement [*Kida v. Senate*,

Substantive Limitations

Circumscribe both the exercise of the power itself and the allowable subject of legislation

Express limitations:

- (1) On general powers - Bill of Rights [Art. III]
- (2) On taxation [Secs. 28 and 29(3), Art. VII]
- (3) On appropriation [Secs. 25 and 29(1) and (2), Art VI]
- (4) On appellate jurisdiction of the SC [Sec. 30, Art. VI]
- (5) No law granting title of royalty or nobility shall be passed [Sec. 31, Art. VI]

Implied Limitations:

- (1) No power to pass irrevocable law
- (2) Non-encroachment on powers of other departments
- (3) Non-delegation of powers

Limitations on revenue, appropriations, and tariff measures

Appropriations

General Limitations:

- (1) Appropriations must be for a *public purpose*.
- (2) The appropriation must be *by law*.
- (3) Cannot appropriate public funds or property, directly or indirectly, in favor of
 - (a) Any sect, church, denomination, or sectarian institution or system of religion or
 - (b) Any priest, preacher, minister, or other religious teacher or dignitary as such.

Exception: if the priest etc. is assigned to:

- (a) The Armed Forces;
- (b) Any penal institution;

- (c) Government orphanage;
- (d) Leprosarium.
- (4) Government is not prohibited from appropriating money for a valid secular purpose, even if it *incidentally* benefits a religion, e.g. appropriations for a national police force is valid even if the police also protects the safety of clergymen. Also, the temporary use of public property for religious purposes is valid, as long as the property is available for all religions.

Specific Limitations

For General Appropriations Bills [Sec. 25(1)-(5)]

- (1) Congress *may not increase* the appropriations recommended by the President for the operation of the Government as specified in the budget.
- (2) Form, content and manner of preparation of the budget shall be prescribed by law.
- (3) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein.
- (4) Procedure in approving appropriations FOR THE CONGRESS shall strictly follow the procedure for approving appropriations for other departments and agencies.
- (5) No law shall be passed authorizing any transfer of appropriations. However, the following may, BY LAW, be authorized to AUGMENT any item in the general appropriations law for their respective offices FROM SAVINGS in other items of their respective appropriations:
 - (a) President
 - (b) Senate President
 - (c) Speaker of the HOR
 - (d) Chief Justice of the Supreme Court
 - (e) Chairs of Constitutional Commissions

Principles in ascertaining the meaning of savings

- (1) Congress wields the power of the purse.
- (2) The Executive is expected to faithfully execute the GAA and to spend the budget in accordance with the provisions of the GAA.
- (3) Congress does not allow the Executive to override its authority over the purse as to let the Executive exceed its delegated authority.
- (4) Savings should be actual: real or substantial, or something that exists presently in fact, not merely theoretical, possible, potential or hypothetical. [Araullo v. Aquino, G.R. No. 209287 (2014)]

So long as there is an item in the GAA for which Congress had set aside a specified amount of public fund, savings may be transferred thereto for augmentation purposes. [Araullo v. Aquino, G.R. No. 209287 (2015)]

To be valid, an *appropriation must indicate a specific amount and a specific purpose*. However, *the purpose may be specific even if it is broken down into different related sub-categories of the same nature* (e.g. "conduct elections" covers regular, special, or recall elections) [Goh v. Bayron, G.R. No. 212584 (2014).]

Guidelines for disbursement of discretionary funds appropriated for particular officials: [Sec. 25(6)]

- (1) For public purposes
- (2) To be supported by appropriate vouchers
- (3) Subject to such guidelines as may be prescribed by law

If Congress fails to pass the general appropriations bill by the end of any fiscal year: [Sec. 25(7)]

- (1) The general appropriations bill for the previous year is *deemed reenacted*
- (2) It shall remain in force and effect until the general appropriations bill is passed by Congress.

For Special Appropriations Bills

- (1) Shall specify the purpose for which it is intended
- (2) Shall be supported by funds
 - (a) actually available *as certified* by the National Treasurer; or
 - (b) to be raised by corresponding revenue proposal therein

Limitation on Use of Public Funds [Sec. 29]

- (1) No money shall be paid out of the National Treasury *except* in pursuance of an appropriation made by law.
- (2) However, this rule does not prohibit continuing appropriations, e.g. for debt servicing, for the reason that this rule does not require yearly or annual appropriation. [See *Guingona v. Carague* (1991)]

Four phases of Government's budgeting process:

- (1) Budget preparation
- (2) Legislative authorization
- (3) Budget execution
- (4) Budget accountability

Taxation [Sec. 28]**Nature of provision**

Sec. 28 is a listing of the limits on the *inherent* and *otherwise unlimited* power

Purposes of taxation

- (1) Pay debts and provide for the common defense and general warfare;
- (2) Raise revenue;
- (3) Instrument of national and social policy;
- (4) Instrument for extermination of undesirable acts and enterprises;
- (5) Tool for regulation;
- (6) Imposition of tariffs designed to encourage and protect locally produced goods against competition for imports.

Limitations

- (1) **Public purpose** – Power to tax should be exercised only for a public purpose.
- (2) **Uniform and equitable**
 - (a) Operates with the same force and effect in every place where the subject of it is found
 - (b) Classification for the purpose of taxation is not prohibited *per se*, BUT it must comply with the *Test of Valid Classification* [See *Ormoc Sugar Central v. Ormoc City* [1968], on equal protection and local taxes]

Test of Valid Classification

- (1) Based on substantial distinctions which make real differences
- (2) Germane to the purpose of law
- (3) Applies to present and future conditions substantially identical to those of the present
- (4) Applies equally to those who belong to the same class

Progressive

The rate increases as the tax base increases

Tax burden is based on the taxpayers' capacity to pay

Suited to the social conditions of the people

Reflects aim of the Convention that legislature following social justice command should use taxation as an *instrument for more equitable distribution of wealth*

Progressive taxation is a *directive* to Congress and is *not* a *judicially enforceable* right [Tolentino v. Secretary of Finance, *supra*]

Constitutional Tax Exemptions:

- (1) Religious, charitable, educational institutions and their properties
- (2) All revenues and assets of *non-stock, non-profit educational* institutions are exempt from taxes and duties PROVIDED that such revenues and assets are

actually, directly and exclusively used for educational purposes [Art. XIV, Sec. 4(3)]

- (3) Grants, endowments, donations or contributions used *actually, directly and exclusively* for educational purposes shall be exempt from tax, subject to conditions prescribed by law [Art. XIV, sec. 4(4)]

Special Funds

- (1) Money collected on a tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only.
- (2) Once the special purpose is fulfilled or abandoned, any balance shall be transferred to the general funds of the Government

Presidential veto and congressional override

Submission to the President; President's Veto power [Sec 27, Art VI]

Every bill, in order to become a law, must be presented to and signed by the President.

If the President does not approve of the bill, he shall veto the same and return it with his objections to the *house from which it originated*. The House shall enter the objections in the journal and proceed to reconsider it.

The President must communicate his decision to veto within 30 days from the date of receipt thereof. *Otherwise, the bill shall become a law as if he signed it.* ("Lapsed into law")

To override the veto, at least 2/3 of ALL the members of *each* house must agree to pass the bill. In such case, the veto is overridden and becomes a law without need of presidential approval.

General Rule: Partial veto is invalid

Exceptions:

- (1) Veto of particular items of an appropriation, tariff, or revenue bill
- (2) Doctrine of Inappropriate Provisions

Item veto

The President may veto particular items in an appropriation, revenue or tariff bill. *The whole item (and not just a portion) must be vetoed.* [Bengzon v. Drilon (1992)]

Item – in a bill, refers to the particulars, the details, the distinct and severable parts; an indivisible sum of money dedicated to a stated purpose; in itself, a specific appropriation of money, not some general provision of law, which happens to be in an appropriation bill.

The president cannot veto *unavoidable obligations*, i.e. already vested by another law (e.g. payment of pensions, see *Bengzon, supra*).

This veto will not affect items to which he does not object.

Veto of a Rider

A **rider** is a provision which does not relate to a particular appropriation stated in the bill.

Since it is an *invalid provision* under Art. VI, Sec. 25(2), the President may veto it as an item.

The executive's veto power does not carry with it the power to strike out conditions or restrictions. *If the veto is unconstitutional, it follows that the same produced no effect whatsoever*, and the restriction imposed by the appropriation bill, therefore, remains. (*Bolinao Electronics Corp v. Valencia* [1964])

Doctrine of Inappropriate Provisions

A provision that is constitutionally inappropriate *for an appropriation bill* may be singled out for veto (i.e. treated as an item) even if it is not an appropriation or revenue item. [*Gonzales v. Macaraig* (1990)]

G.3. NON-LEGISLATIVE

- (1) Power to canvass the presidential elections;
- (2) Declare the existence of war;
- (3) Give concurrence to treaties and amnesties;
- (4) Propose constitutional amendments;
- (5) Impeachment

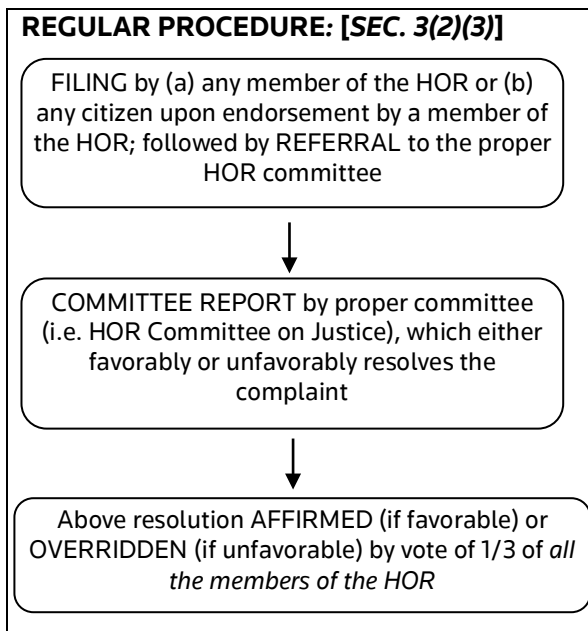
i. Informing function

Via legislative inquiries: Conduct of legislative inquiries is intended to benefit not only Congress but the *citizenry*, who are equally concerned with the proceedings. [*Sabio v. Gordon* (2006)]

ii. Power of impeachment

The HOR shall have the *exclusive* power to *initiate* all cases of impeachment. [Sec. 3(1)]

Initiation



Verified complaint or resolution [Sec. 3(4)]

FILED by 1/3 of all the members of the HOR;
trial by Senate forthwith proceeds

Notes on Initiation:

[*Gutierrez v. HOR Committee on Justice*, G.R. No. 193459, Feb. 15, 2011 and Mar. 8, 2011]

Basic limitation: No impeachment proceeding shall be initiated against the same official more than once within a period of one year [Art. XI, Sec. 2(5)]

Initiation means *filing* coupled with *referral* to the Committee on Justice.

Court *cannot* make a determination of *what constitutes an impeachable offense*; it is a purely political question [citing *Francisco v. House of Representatives* (2003)]

On motion to inhibit: Impeachment is a *political exercise*. The Court *cannot apply* (to Congressmen) the *stringent standards it asks of justices and judges* when it comes to inhibition from hearing cases.

Constitutional requirement that HOR shall **promulgate** its rules on impeachment [Art. XI, Sec. 3(8)] is *different* from the **publication** requirement in *Tañada v. Tuvera*. (In the *Gutierrez* case, promulgation was found to be sufficient.)

Trial

The SENATE shall have the *sole* power to *try and decide* all cases of impeachment. [Sec. 3(6)]

By virtue of the expanded judicial review (art. VIII, sec. 1[2]), the Court's power of judicial review extends over *justiciable issues* arising in impeachment proceedings. [*Francisco v. HOR* (2003)]

BUT the question of *WON Senate Impeachment Rules were followed* is a *political question*. [*Corona v. Senate*, G.R. No. 200242, Jul. 17, 2012]

iii. Other non-legislative powers

- (1) Power to canvass the presidential elections;
- (2) Declare the existence of war;
- (3) Give concurrence to treaties and amnesties;
- (4) Propose constitutional amendments;
- (5) Implied powers such as the power to punish contempt in legislative investigations.

G.4. SPECIFIC POWERS

- (1) Constituent power
- (2) Legislative Inquiries
- (3) Appropriation
- (4) Taxation
- (5) Concurrence in treaties and international agreements
- (6) War powers and delegation power

IV. Executive Department

THE PRESIDENT**Qualifications:**

- (1) Natural-born citizen of the Philippines;
- (2) A registered voter;
- (3) Able to read and write;
- (4) At least 40 years of age on the day of the election; and
- (5) A resident of the Philippines for at least 10 years immediately preceding such election. [Art. VII, Sec. 2]

Election:

- (1) **Regular Election** – Second Monday of May
- (2) **National Board of Canvassers** (President and Vice-President) – Congress
 - (a) Returns shall be transmitted to Congress, directed to the Senate President
 - (b) Joint public session – not later than 30 days after election date; returns to be opened in the presence of the Senate and HOR in joint session

Jurisprudence on Canvassing:

Congress may validly delegate the initial determination of the authenticity and due execution of the certificates of canvass to a Joint Congressional Committee, composed of members of both houses. [*Lopez v. Senate*, G.R. No. 163556, June 8, 2004]

Even after Congress has adjourned its regular session, it may continue to perform this constitutional duty of canvassing the presidential and vice-presidential election results without need of any call for a special session by the President. [...] Only when the board of canvassers has completed its functions is it rendered *functus officio*. [*Pimentel, Jr. v. Joint Committee of Congress*, G.R. No. 163783, June 22, 2004].

If the COMELEC is proscribed from conducting an official canvass of the votes cast for the President and Vice-President, it is,

with more reason, prohibited from making an "unofficial" canvass of said votes. [*Brillantes v. COMELEC*, G.R. No. 163193, June 15, 2004]

The Supreme Court as Presidential Electoral Tribunal: The Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

Term of Office: 6 years, which shall begin at noon on the 30th day of June next following the day of the election and shall end at noon of the same day 6 years thereafter. [Art. VII, Sec. 4]

The PRESIDENT is not eligible for re-election.

Note: No person who has succeeded as President and has served for more than 4 years shall be qualified for election to the same office for any length of time. [Art. VII, Sec. 4]

A. PRIVILEGES, INHIBITIONS, DISQUALIFICATIONS

A.1. PRIVILEGES

President

Official residence

The president shall have an official residence. [Sec. 6]

Salary

Determined by law. Shall not be decreased during tenure. No increase shall take effect until after the expiration of the term of the incumbent during which such increase was approved. [Sec. 6]

Presidential Immunity

The President as such cannot be sued, enjoying as he does immunity from suit

But the validity of his acts can be tested by an *action against other executive officials*. [*Carillo vs. Marcos* (1981)]

The privilege may be invoked ONLY by the President. — Immunity from suit pertains to the President by virtue of the office and may be invoked *only by the holder of the office*; not

by any other person in the President's behalf. The President *may waive* the protection afforded by the privilege and submit to the court's jurisdiction. [*Soliven v. Makasiar* (1988); *Beltran v. Makasiar* (1988)].

BUT presidential *decisions* may be questioned before the courts where there is *grave abuse of discretion* or that the President acted *without or in excess of jurisdiction*. [*Gloria v. Court of Appeals*, G.R. No. 119903, Aug. 15, 2000]

Immunity co-extensive with tenure and covers only official duties. After tenure, the Chief Executive cannot invoke immunity from suit for civil damages arising out of acts done by him while he was President which were *not performed in the exercise of official duties*. [*Estrada v. Desierto*, G.R. Nos. 146710-15, March 2, 2001]

Cannot be invoked by a non-sitting president. This presidential privilege of immunity cannot be invoked by a non-sitting president even for acts committed during his or her tenure. Courts look with disfavor upon the presidential privilege of immunity, especially when it impedes the search for truth or impairs the vindication of a right. [*Saez v. Macapagal-Arroyo*, 681 SCRA 678 (2012), on an Amparo petition.]

Exception: The president may be sued if the act is one not arising from official conduct. [See *Estrada v. Desierto*, 353 SCRA 452, 523 (2001)]

Presidential Privilege

The power of the government to withhold information from the public, the courts, and the Congress. [*Schwartz*]

It is "the right of the President and high-level executive branch officers to withhold information from Congress, the courts, and ultimately the public." [*Rozell*]

N.B. Case law uses the term *presidential privilege* to refer to either (1) *immunity from suit* (i.e. immunity from judicial processes, see *Neri v. Senate*, *infra*; accord. *Saez v. Macapagal-Arroyo*, *supra*); or (2) *executive privilege* (see *Akbayan v. Aquino* (2008), as discussed below.

2 Kinds of Executive Privilege in *Neri v. Senate* (2008)

- (1) **Presidential Communications Privilege (President):** communications are presumptively privileged; president must be given freedom to explore alternatives in policy-making.
- (2) **Deliberative Process Privilege (Executive Officials):** refer to materials that comprise part of a process by which governmental decisions and policies are formulated. This includes diplomatic processes. [See *Akbayan v. Aquino* (2008)]

Varieties of Executive Privilege (US):

- (1) **State secrets privilege** - invoked by U.S. Presidents, beginning with Washington, on the ground that the information is of such nature that its disclosure would *subvert crucial military or diplomatic objectives*.
- (2) **Informer's privilege** - the privilege of the Government not to disclose the identity of *persons who furnish information of violations of law* to officers charged with the enforcement of that law.
- (3) **Generic privilege for internal deliberations** - has been said to attach to intragovernmental documents reflecting advisory opinions, recommendations and *deliberations comprising part of a process* by which governmental decisions and policies are formulated. [*Senate v. Ermita*, G.R. No. 163783, Jun. 22, 2004]

Scope: This jurisdiction recognizes the common law holding that there is a "governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters." Closed-door Cabinet meetings are also a recognized limitation on the right to information.

Note: Executive privilege is properly invoked in relation to *specific categories of information* and *not to categories of persons*—it attaches to the information and not the person. Only the [1] President (and the [2] Executive Secretary, by order of the President) can invoke the privilege. (*Senate v. Ermita, supra*).

Synthesis of Jurisprudential Doctrines

The following are the requisites for invoking presidential privilege:

- (1) **Formal claim of privilege:** For the privilege to apply there must be a formal claim of the privilege. Only the *President or the Executive Secretary* (by authority of the President) can invoke the privilege; and
- (2) **Specificity requirement:** A formal and proper claim of executive privilege requires a specific designation and description of the documents within its scope as well as *precise and certain reasons for preserving confidentiality*. Without this specificity, it is impossible for a court to analyze the claim short of disclosure of the very thing sought to be protected. [*Senate v. Ermita, supra*]

Once properly invoked, a presumption arises that it is privileged. If what is involved is the presumptive privilege of presidential communications when invoked by the President on a matter clearly within the domain of the Executive, the said presumption dictates that the same be recognized and be given preference or priority, in the absence of proof of a compelling or critical need for disclosure by the one assailing such presumption. [*Neri v. Senate*, G.R. No. 180843, Mar. 25, 2008]

Requisites for validity of claim of privilege:

- (1) **Quintessential and non-delegable presidential power:** Power subject of the legislative inquiry must be expressly granted by the Constitution to the President, e.g. commander-in-chief, appointing, pardoning, and diplomatic powers;
- (2) **Operational Proximity Test:** It must be authored, solicited, and received by a close advisor of the President or the President himself. The judicial test is that an advisor must be in "*operational proximity*" with the President (i.e. officials who stand proximate to the President, not only by reason of their *function*, but

also by reason of their *positions* in the Executive's organizational structure);

- (3) **No adequate need:** The privilege may be overcome by a showing of *adequate need*, such that the information sought "likely contains important evidence," and by the *unavailability of the information elsewhere* by an appropriate investigating authority. [*Neri v. Senate, supra*. See *Akbayan v. Aquino (2008)* for application of this principle.]

Vice-President

Qualifications, election and term of office and removal are *same as the President*, except that no Vice-President shall serve for more than *2 successive terms*.

The Vice-President may be appointed as member of the Cabinet; such *requires no confirmation* by the Commission of Appointments.

PROHIBITIONS

The following prohibitions apply to:

- (1) President
- (2) Vice-President,
- (3) The members of the Cabinet, and their deputies or assistants

Prohibited Acts

- (1) Shall not receive any other emoluments from the government or any other source. [For President and Vice-President, *Sec. 6*]
- (2) Unless otherwise provided in the constitution, shall not hold any other office or employment. [*Sec. 13*]
 - (a) The prohibition does *not* include posts occupied by executive officials *without additional compensation* in an *ex-officio* capacity, as provided by law or as required by the primary functions of the said official's office.
 - (b) The *ex-officio* position being actually (i.e. merely additional duty) and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for

his services in said position. (*National Amnesty Commission v. COA, G.R. No. 156982, September 8, 2004*)

- (3) Shall not directly or indirectly (a) practice any other profession; (b) participate in any business; or (c) be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. [*Sec. 13*]
- (4) Strictly avoid conflict of interest in the conduct of their office [*Sec. 13*]
- (5) May not appoint (a) spouse or (b) relatives by consanguinity or affinity within the fourth civil degree as members of Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporation and their subsidiaries.

The stricter prohibition applied to the President and his official family under Art. VII, Sec. 13, as compared to the prohibition applicable to appointive officials in general under Art. IX-B, Sec. 7, par. 2, which is proof of the intent of the 1987 Constitution to *treat them as a class by itself* and to impose upon said class stricter prohibitions. [*Civil Liberties Union v. Executive Secretary (1991)*]

Exceptions to rule prohibiting executive officials from holding additional positions:

President

- (1) The President can assume a Cabinet post (because the departments are mere extensions of his personality, according to the *Doctrine of Qualified Political Agency*, so no objection can be validly raised based on Art. VII, Sec. 13.)
- (2) The President can assume *ex officio* positions. (e.g. The President is the Chairman of NEDA. [*Art. XII, Sec. 9*])

Vice-President

"xxx The Vice-President may be appointed as member of the Cabinet. Such appointment requires no confirmation" [Art. VII, Sec. 3]

Cabinet

Art. VII, Sec. 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. [...]

Art. IX-B, Sec. 7. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including Government-owned or controlled corporations or their subsidiaries.

"[U]nless otherwise provided by the Constitution." [Art. VII, Sec. 13] Only cases contemplated are:

- (1) The Vice-President being appointed as member of the cabinet.
- (2) The Vice-President acting as president when one has not yet been chosen or qualified. [Art. VII, Sec. 7(2),(3)]
- (3) The Secretary of Justice sitting as ex-officio member of the Judicial and Bar Council. [Art. VIII, Sec. 8(1)]; [Civil Liberties Union, supra]

Thus, the Constitution allows a Cabinet member to hold another office provided:

- (a) It is in an *ex-officio* capacity and *without additional compensation*;
- (b) Such is necessitated by the *primary functions* of his position (e.g. Secretary of Trade and Industry as Chairman of NDC; Secretary of Agrarian Reform as Chairman of the Land Bank); AND
- (c) Such is *allowed by law*. [Civil Liberties Union, supra]

N.B. Art. IX-B, Sec. 7 is the general rule for appointed officials. It is not an exception to Art. VII, Sec. 13, which is a specific rule for members of the Cabinet, their deputies and assistants *inter alia*. [See *Civil Liberties Union, supra*]

B. POWERS**B.1. EXECUTIVE AND ADMINISTRATIVE POWERS IN GENERAL****Executive power**

The power to enforce, implement, and administer laws. The president shall ensure that the laws be faithfully executed. [Art. VII, Sec. 17]

The President's *power to conduct investigations* to aid him in ensuring the faithful execution of laws – in this case, fundamental laws on public accountability and transparency – is inherent in the President's powers as the Chief Executive [...] [T]he purpose of allowing ad hoc investigating bodies to exist is to allow an inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land. [Biraogo v. Philippine Truth Commission (2010)]

One Executive: This power is exercised by the President. [Art. VII, Sec. 1]

As *administrative head* of the government, the President is vested with the power to execute, administer and carry out laws into practical operation. [National Electrification Commission vs. CA (1997)]

Presidential Powers (Summary)

- (1) **Executive Power** - Power to enforce and administer laws;
- (2) **Power of Control** – (a) Nullify, modify judgments of subordinates [See Art. VII, Sec. 17]; (b) undo or redo actions of subordinates; and (c) lay down rules for the performance of subordinates' duties;
- (3) **Power of Supervision** - *Oversight function*; see to it that rules, which they did not make, are followed;

(4) Power of Appointment - Legislative can *create* office, but *only executive can fill it*; Congress cannot circumvent this by setting very narrow qualifications, such that only one person is qualified to hold office (*See Flores v. Drilon, G.R. No. 104732, Jun. 22, 1993*)

(5) Power over Legislation

- (a) Veto Power
- (b) Power to Declare Emergency - *Declaration only*; exercise of power is vested in Congress, but may be delegated to the President.
- (c) Integrative Power - Powers *shared with legislative* (e.g. appointments requiring confirmation, rule-making); legislation during times of emergency

(6) Commander-in-Chief Powers [Art. VII, Sec. 18]

- (a) Call Out Power - Armed forces to suppress lawless violence;
- (b) Suspension of Writ of Habeas Corpus- Only (a) in times of rebellion or invasion AND (b) when required by public safety
- (c) Martial Law – N.B. Does not suspend Constitution

(7) Diplomatic Powers - Including *Power to Enter into Treaties*

(8) Residual Power - To protect the general welfare of people; founded on duty of President as steward of the people; includes powers unrelated to execution of any provision of law [*See Marcos v. Manglapus*]

(9) Other Powers

- (a) Power to Pardon - Reprieve, commute, pardon, remit fines and forfeitures after final judgment [Art. VII, Sec. 19(1)]
- (b) Power to Grant Amnesty - With concurrence of majority of all members of Congress
- (c) Borrowing Power - Contract or guarantee foreign loans with concurrence of Monetary Board [Art. VII, Sec. 20]

(d) Budgetary Power - Submit to congress budget of bills and expenditures [Art. VII, Sec. 22]

(e) Informing Power – Address Congress during opening of session, or at any other time [Art. VII, Sec. 23]

B.2. POWER OF APPOINTMENT

In General

Sec. 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards. [...]

Definition: The *selection*, by the authority vested with the power, of an individual who is to exercise the functions of a given office.

Appointment is distinguished from:

- (1) **Designation** – Imposition of *additional duties*, usually by law, on a person already in the public service.
- (2) **Commission** – *Written evidence* of the appointment.

Classification of Power of Appointment:

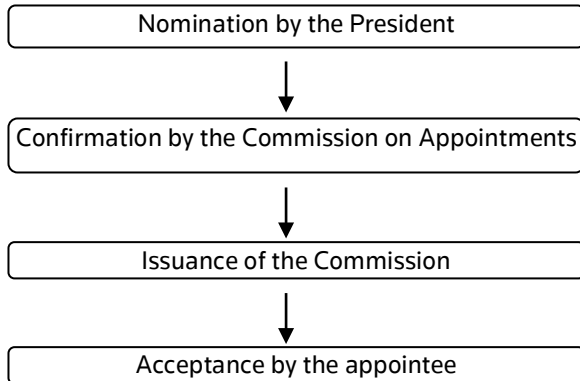
There are four groups of officers whom the President may appoint:

- (1) Heads of the Executive Department, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain and other officers whose appointments are vested in him;

- (2) All other officers of the government whose appointments are not otherwise provided by law;
- (3) Those whom the President may be authorized by law to appoint;
- (4) Officers lower in rank whose appointments Congress may by law vest in the President alone.

Note: Heads of bureaus were deliberately removed from the provision of appointments requiring confirmation and were included in the 4th group; hence, their appointments no longer need confirmation. [*Sarmiento v. Mison* (1987)]

Steps in the appointing process:



Notes:

In the case of *ad interim* appointments, steps 1, 3 and 4 precede step 2.

An appointment is deemed complete only upon *acceptance*. [*Lacson v. Romero*, 84 Phil. 740 (1949)]

Appointment is essentially a *discretionary power*, the only condition being that the appointee, if issued a permanent appointment, should possess the *minimum qualification requirements*, including the Civil Service eligibility prescribed by law for the position. This discretion also includes the determination of the nature or character of the appointment.

Elements for a valid appointment (A-Tra-Va-Re):

- (1) Authority to appoint and evidence of the exercise of the authority;
- (2) Transmittal of the appointment paper and evidence of the transmittal (preferably through the Malacañang Records Office);
- (3) Vacant position at the time of appointment; and
- (4) Receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications.

All these elements should always apply, regardless of when the appointment is made, whether outside, just before, or during the appointment ban. [*Velicaria-Garafil v. Office of the President*, G.R. No. 203372 (2015)] (N.B. Outside of the bar coverage)

When confirmation is not required:

- (1) When the President appoints other government officers whose appointments are *not otherwise provided for by law*;
- (2) Those officers whom he may be *authorized by law to appoint* (e.g. Chairman and Members of the Commission on Human Rights);
- (3) When Congress creates *inferior offices* but *omits to provide for appointment* thereto, or provides in an unconstitutional manner for such appointments (*See Sarmiento v. Mison, supra*);
- (4) Appointment of the *Vice-President* as member of the Cabinet (Art. VII, Sec. 3)
- (5) Appointments upon recommendation of the *Judicial and Bar Council* – *see below*
- (6) Appointments *solely by the President*– *see below*

Appointments upon Recommendation of the Judicial and Bar Council

Do not require confirmation by the Commission on Appointments.

- (1) Members of the *Supreme Court and all other courts* [Art. VII, Sec. 9]

For lower courts, appointment shall be issued within 90 days from submission of the list

- (2) *Ombudsman* and his 5 deputies (for Luzon, Visayas, Mindanao, general and military) [Art. XI, Sec. 9]

All vacancies shall be filled within 3 months after they occur.

Appointments solely by the President [Art. VII, sec. 16]

- (1) Those vested by the Constitution on the President alone (e.g. appointment of Vice-President to the Cabinet) [Art. VII, Sec. 3(2)]
- (2) Those whose appointments are not otherwise provided by law.
- (3) Those whom he may be authorized by law to appoint.
- (4) Those other officers lower in rank whose appointment is vested by law in the President.

Sarmiento v. Mison (1987):

Const. Text: "The Congress may, by law, vest in the appointment of other officers lower in rank in the President alone". This meant that until a law is passed giving such appointing power to the President alone, then such appointment has to be confirmed.

Held: The inclusion of the word "alone" was an oversight. Thus, the Constitution should read "The Congress may, by law, vest the appointment of other officers lower in rank in the President."

Limitations on appointing power of the President

- (1) Art. VII, Sec. 13, par. 2 - The spouse and relatives by consanguinity or affinity within the 4th civil degree of the President shall not, during his "tenure", be appointed as:
 - (a) Members of the Constitutional Commissions;
 - (b) Member of the Office of Ombudsman;
 - (c) Secretaries;
 - (d) Undersecretaries;
 - (e) Chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.
- (2) Recess (*Ad Interim*) appointments: The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress. (art. VII, sec. 16[2])

Interim or Recess Appointments

Regular and recess (ad interim) appointments

2 Kinds of Appointments Requiring Confirmation:

- (1) **Regular:** if the CA (Congress) is in session; and
- (2) **Ad Interim:** during the recess of Congress (because the CA shall meet only while Congress is in session [Art. VI, Sec. 19])

Regular appointment

- (1) Made by the President while Congress is in session
- (2) Takes effect *only after confirmation* by the Commission on Appointments (CA)
- (3) Once approved, continues until the end of the term *Note:* The mere filing of a motion for reconsideration of the confirmation of

an appointment cannot have the effect of recalling or setting aside said appointment. The Constitution is clear – there must either be a rejection by the Commission on Appointments or non-action on its part for the confirmation to be recalled.

Temporary Designations

The President may designate an *officer* already in the gov't service or *any other competent person* to perform the functions of any office in the executive branch, appointment to which is vested in him by law, when:

- (1) The officer regularly appointed to the office is unable to perform his duties by reason of illness, absence or any other cause; or
- (2) There exists a vacancy;

In no case shall a temporary designation exceed one (1) year. [*Admin Code of 1987, Bk., III Sec. 17*]

Limitations on the appointing power of the ACTING PRESIDENT

- (1) Appointments extended by an Acting President shall remain effective unless revoked by the elected President within ninety days from his assumption or re-assumption of office. [*Art. VII, Sec. 14*]
- (2) *Midnight appointments ban: See below*

Commission on Appointments Confirmation

From the rulings in *Sarmiento III v. Mison* (1987), *Bautista v. Salonga* (1989), and *Deles v. Constitutional Commission* (1989), these doctrines are deducible:

Confirmation by the Commission on Appointments is required only for presidential appointees as mentioned in the first sentence of *Art. VII, Sec. 16*, including those officers whose appointments are expressly vested by the Constitution itself in the President:

- (1) Heads of the executive departments
- (2) Ambassadors, other public ministers and consuls
- (3) Officers of the Armed Forces of the Philippines with the rank of colonel or naval captain (*Rationale: These are officers of a sizeable command enough to stage a coup*)

N.B. Appointments to the Philippine Coast Guard, which is no longer under the AFP, need not undergo confirmation [*Soriano v. Lista, G.R. No. 153881 (2003)*]

- (4) Other officers whose appointments are vested in the President by the Constitution:
 - (a) Chairman and Commissioners of the Constitutional Commissions (*Art. IX*)
 - (b) Regular members of the Judicial and Bar Council (*Art. VII, Sec. 8[2]*)
 - (c) Sectoral Congressional reps. (*Art. XVIII, Sec 7*) (*N.B. Provision no longer in force*)

Midnight Appointments Ban

General Rule: Two months immediately before the next presidential elections (2nd Monday of March), and up to the end of his "term" (June 30), a President (or Acting President) shall not make appointments. (*Art. VII, Sec. 15*)

Exception: *Temporary* appointments to executive positions, when continued vacancies will: (a) prejudice public service; or (b) endanger public safety.

Limited to Executive Department - The prohibition against midnight appointment *applies only to positions in the executive department*. [*De Castro v. JBC, G. R. No. 191002, Mar. 17, 2010*]

N.B. *In re: Valenzuela* [A.M. No. 98-5-01-SC, November 9, 1998], which extended the prohibition for midnight appointments to the judiciary, was *effectively overturned*.

Limited to Caretaker Capacity - While "midnight appointments" (i.e. made by outgoing President near the end of his term) are not illegal, they should be made in the capacity of a "caretaker" [a new president being elected], doubly careful and prudent in making the selection, so as not to defeat the policies of the incoming administration. Hence, the issuance of 350 appointments in one night and the planned induction of almost all of them a few hours before the inauguration of the new President may be regarded as abuse of presidential prerogatives. [*Aytona v. Castillo* (1962)] (N.B. The 1935 Const. did not contain an explicit prohibition on midnight appointments)

BUT the *Aytona* ruling does not declare all midnight appointments as invalid, and that the *ad interim* appointment of the petitioner chief of police here, whose qualification and regularity were otherwise not disputed, is thus valid. [*Quimsing v. Tajanglangit* (1964)]

Applies only to President - Ban does not extend to appointments made by local elective officials. There is no law that prohibits local elective officials from making appointments during the last days of his or her tenure. [*De Rama v. CA* (2001)]

Power of Removal

General Rule: The power of removal may be implied from the power of appointment.

Exception: However, the President cannot remove officials appointed by him where the Constitution prescribes certain methods for separation of such officers from public service, e.g. Chairmen and Commissioners of Constitutional Commissions who can be removed only by impeachment, or judges who are subject to the disciplinary authority of the Supreme Court.

Career Civil Service: Members of the career civil service of the Civil Service who are appointed by the President may be directly disciplined by him (*Villaluz v. Zaldivar*, 15 SCRA 710)

Serve at the pleasure of the president: Cabinet members and such officers whose continuity in office depends upon the pleasure of the

president may be replaced at any time, but legally speaking, *their separation is effected not by removal but by expiration of their term* of the appointee.

Ad interim appointment

- (1) Made by the President while Congress is *not* in session
- (2) Takes effect *immediately*, BUT ceases to be valid (1) if disapproved by the CA or (2) upon the next adjournment of Congress. [Art. VII, Sec. 16, par. 2]
- (3) *Ad interim appointments are permanent appointments.* Ad Interim appointments to the Constitutional Commissions (e.g. COMELEC) are permanent as these take effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to the confirmation of the CA does not alter its permanent character. [*Matibag v. Benipayo* (2002)]

Acting/Temporary appointment

Can be *withdrawn or revoked at the pleasure of the appointing power*. The appointee does not enjoy security of tenure.

Limitation: President constitutionally prohibited from making such appointments to the Constitutional Commissions (in order to preserve the latter's independence).

No need for CA confirmation even if Congress is in session. Also, Congress cannot impose on the president the obligation to appoint an incumbent Undersecretary as [the President's] temporary *alter ego*, i.e. Acting Secretary. [*Pimentel v. Ermita*, G.R. No. 164978, Oct. 13, 2005] (Asked in the 2013 Bar Exams)

Ad Interim and Acting Appointments, Distinguished

<i>Ad Interim (Recess)</i>	<i>Acting</i>
<i>Effective upon acceptance</i>	
Extended only when Congress is in recess	May be extended even if Congress is in session
Submitted to the CA for confirmation	Not submitted to the CA for confirmation
Permanent appointments	Way of <i>temporary</i> filling up vacancies

B.3. POWER OF CONTROL AND SUPERVISION

Supervision and Control, Distinguished

<i>Supervision</i>	<i>Control</i>
<p><i>Overseeing</i> or the power or authority of the officer to see that subordinate officers perform their duties, and if the latter fail or neglect to fulfill them, then the former may take such action or steps as prescribed by law to make them perform these duties.</p> <p>This does not include the power to overrule their acts, if these acts are within their discretion.</p>	<p>Power of an officer to <i>alter, modify, nullify or set aside</i> what a subordinate officer had done <i>and to substitute</i> the judgment of the former for that of the latter.</p>

Control of Executive Departments

[Art. VII, Sec. 17]

Control

Control is essentially the power to [a] *alter or modify or nullify or set aside what a subordinate officer had done* in the performance of his duties and to [b] *substitute the judgment of the former with that of the latter*. [*Biraogo v Philippine Truth Commission* (2010)]

The President may, by executive or administrative order, *direct the reorganization of government entities under the Executive Department*. This is also sanctioned under the Constitution, as well as other statutes [e.g. Admin. Code]. This recognizes the recurring need of every President to reorganize his or her office "to achieve simplicity, economy and efficiency," in the manner the Chief Executive deems fit to carry out presidential directives and policies. [*Tondo Medical Employees v CA* [2007]]

Doctrine of Qualified Political Agency

(Alter Ego Principle)

All the different executive and administrative organizations are *mere adjuncts* of the Executive Department. This is an adjunct of the *Doctrine of One Executive*.

The heads of the various executive departments are assistants and *agents of the Chief Executive*. [*Villena v. Sec. of Interior* (1939)]

In the regular course of business, acts of exec. departments, *unless disapproved or reprobated* by the Chief Executive, are *presumptively acts of the Chief Executive*. [*Free Telephone Workers Union vs. Minister of Labor and Employment* (1981)]

General Rule: The multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments.

Exceptions:

(1) Cases where the Chief Executive is required by the Constitution or by the law to act in person; or

(2) The exigencies of the situation demand that he act personally.

Power to Abolish Offices

Generally, power to abolish a public office is legislative. BUT, as far as bureaus, offices, or agencies of the executive dep't are concerned, *power of control* may justify him to *inactivate* functions of a particular office. (See *Buklod ng Kawaning Elib v. Zamora*, 360 SCRA 718 [2001], where the President effectively

abolished the Economic Intelligence Bureau by “deactivating” it, transferring its functions to other agencies.)

In establishing an executive department, bureau or office, the legislature necessarily ordains an executive agency’s position in the scheme of administrative structure. Such determination is *primary, but subject to the President’s continuing authority to reorganize the administrative structure.* [*Anak Mindanao v. Executive Secretary (2007)*]

General Supervision over Local Government Units and the Autonomous Regions

The President shall exercise general supervision over local governments. [Art. X, Sec. 4]

The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed. [Art. X, Sec. 16]

The President may suspend or remove local officials by virtue of the power delegated to him by Congress through the Local Government Code. The Constitution also places local governments under the general supervision of the president [*supra*], and also allows Congress to include in the local government code provisions for removal of local officials (*see Art. X, Sec. 3*). [*See Ganzon v. CA (1991)*]

B.4. MILITARY POWERS

Commander-in-chief powers [Art. VII, Sec. 18]

- (1) He may *call out* such armed forces to prevent or suppress lawless violence, invasion or rebellion.
- (2) He may *suspend the privilege of the writ of habeas corpus*, or
- (3) He may proclaim *martial law* over the entire Philippines or any part thereof.

The President shall be the Commander-in-chief of all armed forces of the Philippines

The ability of the President to require a military official to secure prior consent before appearing before Congress pertains to a wholly different and independent specie of presidential authority—the commander-in-chief powers of the President. By tradition and jurisprudence, the commander-in-chief powers of the President are not encumbered by the same degree of restriction as that which may attach to executive privilege or executive control.

Outside explicit constitutional limitations, the commander-in-chief clause vests in the President, as commander-in-chief, *absolute authority over the persons and actions of the members of the armed forces*. Such authority includes the ability of the President to restrict the travel, movement and speech of military officers, activities which may otherwise be sanctioned under civilian law. [*Gudani v. Senga, G.R. No. 170165, August 15, 2006*]

Graduated Powers – Art. VII, sec. 18 grants the President, as Commander-in-Chief, a “sequence” of “*graduated power[s]*.” From the most to the least benign, these are: (1) the calling out power, (2) the power to suspend the privilege of the writ of habeas corpus, and the (3) power to declare martial law. In the exercise of the latter two powers, the Constitution requires the concurrence of two conditions, namely, an actual invasion or rebellion, and that public safety requires the exercise of such power. However, as we observed in *Integrated Bar of the Philippines v. Zamora*, “these conditions are not required in the exercise of the calling out power. The only criterion is that ‘whenever it becomes necessary,’ the President may call the armed forces ‘to prevent or suppress lawless violence, invasion or rebellion.’” [*Sanlakas v. Executive Secretary (2004)*]

Call out the AFP to prevent lawless violence

This is merely a police measure meant to quell disorder. As such, the Constitution does not regulate its exercise radically.

State of Rebellion

While the Court may examine whether the power was exercised within constitutional limits or in a manner constituting grave abuse of discretion, none of the petitioners here have, by way of proof, supported their assertion that the President acted without factual basis. The President, in declaring a *state of rebellion* and in calling out the armed forces, was merely exercising a wedding of her Chief Executive and Commander-in-Chief powers. These are *purely executive* powers, vested on the President by Sections 1 and 18, Article VII, as opposed to the *delegated legislative* powers contemplated by Section 23 (2), Article VI. [*Sanlakas v. Executive Secretary* (2004)]

Exercise of Emergency Powers

Background: Presidential Proclamation 1017 (Declaring a State of National Emergency) is different from the law in *Sanlakas* as this proclamation was woven out of the "calling out" and "take care" powers of the President joined with the "*temporary takeover*" provision under Art. XII, section 17. PP1017 purports to grant the President, without authority or delegation from Congress, to take over or direct the operation of any privately-owned public utility or business affected with public interest.

While the President could validly declare the existence of a state of national emergency even in the absence of a Congressional enactment, *the exercise of the emergency powers*, such as the taking over of privately-owned public utility or business affected with public interest, *requires a delegation from Congress* which is the repository of emergency powers. [*David v. Arroyo* (2006)]

Suspend the privilege of the writ of *habeas corpus*

"Writ of *habeas corpus*"

Is an order from the court commanding a detaining officer to inform the court:

- (1) If he has the person in custody; and
- (2) His basis in detaining that person

"Privilege of the writ"

Is that portion of the writ requiring the detaining officer to show cause why he should not be tested. *Note that it is the privilege that is suspended, not the writ itself.*

Requisites for Suspension of the Privilege of the Writ:

- (1) There must be an *actual* invasion or rebellion; and
- (2) The public safety requires the suspension.

Duration: Not to exceed 60 days unless extended by Congress.

Effects of the Suspension of the Privilege:

- (1) The suspension of the privilege of the writ applies only to persons "judicially charged" for rebellion or offenses inherent in or directly connected with invasion [Art. VII, Sec. 18(5)].
 - (a) Such persons suspected of the above crimes can be arrested and detained without a warrant of arrest.
 - (b) *The suspension of the privilege does not make the arrest without warrant legal.* But the military is, in effect, enabled to make the arrest anyway since, with the suspension of the privilege, there is no remedy available against such unlawful arrest (arbitrary detention).
 - (c) The arrest without warrant is justified by the emergency situation and the difficulty in applying for a warrant considering the time and the number of persons to be arrested.
 - (d) The crime for which he is arrested must be one *related to rebellion or invasion*. As to others, the suspension of the privilege does not apply.
- (2) During the suspension of the privilege of the writ, any person thus arrested or detained shall be *judicially charged within 3 days*, or otherwise he shall be released. [Art. VII, sec. 18(6)]
 - (a) The effect therefore is only to *extend the periods during which he can be detained without a warrant*. When the

privilege is suspended, the period is extended to 72 hours.

- (b) What happens if he is not judicially charged nor released after 72 hours? The public officer becomes liable under RPC Art. 125 for "delay in the delivery of detained persons."

- (3) The *right to bail shall not be impaired* even when the privilege of the writ of habeas corpus is suspended. [Art. III, Sec. 13]

The suspension of the privilege does not destroy petitioners' right and cause of action for damages for illegal arrest and detention and other violations of their constitutional rights. The suspension does not render valid an otherwise illegal arrest or detention. What is suspended is merely the speedy means of obtaining his liberty. [*Aberca v. Ver (1988)*]

Proclaim Martial Law

The **requisites** in proclaiming Martial Law are:

- (1) There must be an invasion or rebellion, and
- (2) Public safety requires the proclamation of martial law all over the Philippines or any part thereof.

The following **cannot** be done [Art. VII, Sec. 18]:

- (1) Suspend the operation of the Constitution.
- (2) Supplant the functioning of the civil courts and the legislative assemblies.
- (3) Confer jurisdiction upon military courts and agencies over civilians, where civil courts are able to function.

"Open Court" Doctrine: Civilians cannot be tried by military courts if the civil courts are open and functioning. If the civil courts are not functioning, then civilians can be tried by the military courts. Martial law usually contemplates a case where the courts are already closed and the civil institutions have already crumbled, i.e. a "theater of war." If the courts are still open, the President can just suspend the privilege and achieve the same effect. [*Olague v. Military Commission*

No. 34, 150 SCRA 144 (1987)]

- (4) Automatically suspend the privilege of the writ of habeas corpus. The President must *expressly* suspend the privilege.

The Role of Congress [See Art. VII, Sec. 18, par. 1, 2]

- (1) Congress may revoke the proclamation of martial law or suspension of the privilege of the writ of habeas corpus before the lapse of 60 days from the date of suspension or proclamation.
- (2) Upon such proclamation or suspension, Congress shall convene at once. If it is not in session, it shall convene in accordance with its rules without need of a call within 24 hours following the proclamation or suspension.
- (3) Within 48 hours from the proclamation or the suspension, the President shall submit a report, in person or in writing, to the Congress (meeting in joint session of the action he has taken).
- (4) The Congress shall then vote jointly, by a majority of all its members. It has two options:
 - (a) To *revoke* such proclamation or suspension. When it so revoked, the *President cannot set aside (or veto) the revocation* as he normally would do in the case of bills.
 - (b) To *extend* it beyond the 60-day period of its validity.

Congress can only so extend the proclamation or suspension upon the initiative of the President.

The period need not be 60 days; it could be more, as Congress would determine, based on the persistence of the emergency.

Note: If Congress fails to act before the measure expires, it can no longer extend it until the President again re-declares the measure.

If Congress extends the measure, but before the period of extension lapses the requirements for the proclamation or suspension no longer exist, Congress can lift the

extension, since the power to confer implies the power to take back.

The Role of the Supreme Court [See Art. VII, Sec. 18, par. 3]

(1) The Supreme Court may review, in an appropriate proceeding *filed by any citizen*, the *sufficiency of the factual basis* of:

- (a) the proclamation of martial law or the suspension of the privilege of the writ, or
- (b) the extension thereof. It must promulgate its decision thereon within 30 days from its filing.

Note: Calling-out power is purely discretionary on the President; the Constitution *does not explicitly provide for a judicial review of its factual basis*. (IBP v. Zamora [2001])

(2) The jurisdiction of the SC may be invoked in a proper case.

Although the Constitution reserves to the Supreme Court the power to review the sufficiency of the factual basis of the proclamation or suspension in a proper suit, it is implicit that the Court must allow Congress to exercise its own review powers, which is automatic rather than initiated. Only when Congress defaults in its express duty to defend the Constitution through such review should the Supreme Court step in as its final rampart. The constitutional validity of the President's proclamation of martial law or suspension of the writ of habeas corpus is *first a political question in the hands of Congress* before it becomes a justiciable one in the hands of the Court.

If the Congress procrastinates or altogether fails to fulfill its duty respecting the proclamation or suspension within the short time expected of it, then the Court can step in, hear the petitions challenging the President's action, and ascertain if it has a factual basis. [Fortun v.

Macapagal-Arroyo, G.R. No. 190293, Mar. 20, 2012]

(3) Petition for habeas corpus

(a) When a person is arrested without a warrant for complicity in the rebellion or invasion, he or someone else in his behalf has the standing to question the validity of the proclamation or suspension.

(b) Before the SC can decide on the legality of his detention, it must first pass upon the validity of the proclamation or suspension.

(4) Limit on Calling out Power. —Test of Arbitrariness: The question is not whether the President or Congress acted correctly, but whether he acted arbitrarily in that the action had no basis in fact. [IBP v. Zamora, (2000)]. This amounts to a determination of whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction.

There are 4 ways, then, for the proclamation or suspension to be lifted:

- (1) Lifting by the President himself
- (2) Revocation by Congress
- (3) Nullification by the Supreme Court
- (4) By operation of law, after 60 days

Cf. RA 7055 (1991) "An Act Strengthening Civilian Supremacy over the Military by Returning to the Civil Courts the Jurisdiction over Certain Offenses involving Members of the Armed Forces of the Philippines, other Persons Subject to Military Law, and the Members of the Philippine National Police, Repealing for the Purpose Certain Presidential Decrees"

RA 7055 effectively placed upon the civil courts the jurisdiction over certain offenses involving *members of the AFP and other members subject to military law*.

RA 7055 provides that when these individuals commit crimes or offenses penalized under the RPC, other special penal laws, or local government ordinances, regardless of whether civilians are co-accused, victims, or offended parties which may be natural or

juridical persons, they shall be *tried by the proper civil court, except when the offense, as determined before arraignment by the civil court, is service-connected* in which case it shall be tried by court-martial.

The assertion of military authority over civilians cannot rest on the President's power as Commander in Chief or on any theory of martial law. As long as civil courts remain open and are regularly functioning, military tribunals cannot try and exercise jurisdiction over civilians for offenses committed by them and which are properly cognizable by civil courts. To hold otherwise is a violation of the right to due process. [*Olague v. Military Commission No. 34 (1987)*]

Q: Do Letters of Instruction (LOI) and Presidential Decrees issued by the President under the 1973 Constitution during Martial Law form part of the laws of the land?

A: LOIs are presumed to be mere administrative issuances except when the conditions set out in *Garcia-Padilla v. Enrile* exist. To form part of the law of the land, the decree, order or LOI must be (1) issued by the President in the exercise of his extraordinary power of legislation as contemplated in Section 6 of the 1976 Amendments to the Constitution, (2)(a) whenever in his judgment there exists a grave emergency or a threat or imminence thereof, or (b) whenever the interim Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action. LOIs that are mere administrative issuances may be repealed, altered, or modified by way of an executive order. (*PASEI v Torres [1993]*)

B.5. PARDONING POWERS

Nature of Pardoning Power

Sec. 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may **grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.** [Art. VII, Sec. 19, par. 1]

He shall also have the *power to grant amnesty* with the concurrence of a majority of all the Members of the Congress

Forms of executive clemencies

- (1) **Reprieves** - a temporary relief from or postponement of execution of criminal penalty or sentence or a stay of execution. [*Black's Law Dictionary*] It is the withholding of a sentence for an interval of time, a postponement of execution, a temporary suspension of execution. [*People v. Vera (1937)*]
- (2) **Commutations** - Reduction of sentence. [*Black's Law Dictionary*]. It is a remission of a part of the punishment; a substitution of a less penalty for the one originally imposed. [*Vera, supra*]
- (3) **Amnesty** - a sovereign act of oblivion for past acts, granted by government generally to a class of persons who have been guilty usually of political offenses and who are subject to trial but have not yet been convicted, and often conditioned upon their return to obedience and duty within a prescribed time. [*Black's; Brown v. Walker, 161 US 602*].
- (4) Requires **concurrence** of majority of all members of Congress [Art. VII, Sec. 19]
- (5) **Remit fines and forfeitures**, after conviction by final judgment
- (6) **Pardons** - Permanent cancellation of sentence. [*Black's*] It is an act of grace proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed, from the punishment the law inflicts for the crime he has committed. It is a remission of guilt, a forgiveness of the offense. [*Vera, supra*]

Plenary or partial

- (a) **Plenary** - Extinguishes all the penalties imposed upon the offender, including accessory disabilities.
- (b) **Partial** - Does not extinguish all penalties imposed

Conditional or absolute

- (a) **Conditional** - The offender has the right to reject the same since he may feel that the condition imposed is more onerous than the penalty sought to be remitted.
- (b) **Absolute pardon** - Pardonee has no option at all and must accept it whether he likes it or not. In this sense, an absolute pardon is similar to commutation, w/c is also not subject to acceptance by the offender.

General Exceptions to Executive Clemencies

- (a) In cases of impeachment, and
- (b) As otherwise provided in this Constitution e.g. *For election offenses* No pardon, amnesty, parole or suspension of sentence for violation of election laws, rules, and regulations shall be grander by the President without the favorable recommendation by the Commission on Election [Art. IX, sec. 5]

Limitations on PARDON [F-I-E-CCC]

- (a) Cannot be granted for impeachment. [Art. VII, Sec. 19]
- (b) Cannot be granted in cases of violation of election laws without the favorable recommendation of the COMELEC. [Art. IX-C, Sec. 5]
- (c) Can be granted only after conviction by final judgment [*People v. Salle, 250 SCRA 581*]
- (d) Cannot absolve the convict of civil liability. [*People v. Nacional (1995)*]
- (e) Cannot be granted to cases of legislative contempt or civil contempt.
- (f) Cannot restore public offices forfeited, even if pardon restores the eligibility for said offices. [*Monsanto v. Factoran (1989)*]

The right to seek public elective office is unequivocally considered as a political right. Hence, upon acceptance of the pardon, the pardonee regained his full civil and political rights – including the right to seek elective office, even though

that right is not expressly mentioned as provided under Article 36 of the Revised Penal Code [*Risos-Vidal v. COMELEC, G.R. No. 206666 (2015)*].

<i>Pardon</i>	<i>Amnesty</i>
Infractions of peace of the state	Addressed to Political Offenses
Granted to individuals	To classes of persons
Exercised solely by the executive	Requires concurrence of Congress
Private act which must be pleaded and proved	Public act which the courts could take judicial notice
Looks forward and relieves the pardonee of the consequences of the offense	Looks backward and puts into oblivion the offense itself.
Extended after final judgment	May be extended at any stage

When can pardon be granted?

Only after conviction by final judgment. The “conviction by final judgment” limitation under Sec. 19, Art. VII prohibits the grant of pardon, whether full or conditional, to an accused during the pendency of his appeal from his conviction by the trial court. Any application therefor should not be acted upon or the process toward its grant should not be begun unless the appeal is withdrawn. Agencies concerned must require proof from the accused that he has not appealed from his conviction or that he has withdrawn his appeal. [*People v. Bacang (1996)*]

Who determines breach of the conditions of pardon?

The determination of whether the conditions had been breached rests exclusively in the sound judgment of the Chief Executive. Such determination would not be reviewed by the courts. A judicial pronouncement stating that the the conditionally pardoned offender has committed a crime is not necessary before the pardon may be revoked. [*Torres v. Gonzales (1987)*].

Differentiated from

- (a) **Probation** - Disposition where a defendant after conviction and sentence is released subject to (1) conditions imposed by the court and (2) supervision of a probation officer. (*PD No. 968, Sec. 3(a)*)
- (b) **Parole** - Suspension of the sentence of a convict granted by a Parole Board after serving the minimum term of the indeterminate sentence penalty, without granting a pardon, prescribing the terms upon which the sentence shall be suspended. [*Reyes*]

Application of Pardoning Powers to Admin. Cases

- (1) If the President can grant reprieves, commutations and pardons, and remit fines and forfeitures in criminal cases, with much more reason can she grant executive clemency in administrative cases, which are clearly less serious than criminal offenses.
- (2) However, the power of the President to grant executive clemency in administrative cases refers only to *administrative cases in the Executive branch* and not in the Judicial or Legislative branches of the govt. [*Llamas v. Executive Secretary (1991)*]

Removal of Administrative Penalties or Disabilities

In meritorious cases and upon recommendation of the (Civil Service) Commission, the President may commute or remove administrative penalties or disabilities imposed upon officers or employees in disciplinary cases, subject to such terms and conditions as he may impose in the interest of the service. [*Sec. 53, Chapter 7, Subtitle A, Title I, Book V, Administrative Code of 1987*]

Who may avail of amnesty?

(*Asked 5 times in the Bar; answers from case law*)

Amnesty Proclamation No. 76 applies even to Hukbalahaps already undergoing sentence upon the date of its promulgation. The majority of the Court believes that by its context and pervading spirit the proclamation extends to all members of the Hukbalahap. [*Tolentino v. Catoy (1948)*]

The SC agreed with the Sandiganbayan that in fact the petitioners were expressly disqualified from amnesty. The acts for which they were convicted were ordinary crimes without any political complexion and consisting only of diversion of public funds to private profit. The amnesty proclamation covered only acts in the furtherance of resistance to duly constituted authorities of the Republic and applies only to members of the MNLF, or other anti-government groups. [*Macagaan v. People (1987)*]

[Respondents] may avail of the tax amnesty even if they have pending tax assessments. A tax amnesty, being a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise would be due it. [*Republic v. IAC (1991)*]

B.6. DIPLOMATIC POWER

Scope of Diplomatic Power

The President, being the head of state, is regarded as the **sole organ and authority in external relations** and is the country's sole representative with foreign nations. As the chief architect of foreign policy, the President acts as the country's mouthpiece with respect to international affairs.

The President is vested with the authority to:

[DEW-ME-FR]

- (1) **D**eal with foreign states and governments;
- (2) **E**xtend or **w**ithhold recognition;
- (3) **M**aintain diplomatic relations;
- (4) **E**nter into treaties; and
- (5) Transact the business of **f**oreign **r**elations.
[*Pimentel v. Executive Secretary*, G.R. No. 158088, July 6, 2005]

Treaty-making power

No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate. [Art. VII, Sec. 21]

Treaty - As defined by the Vienna Convention on the Law of Treaties, "an international instrument concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation." [*Bayan v. Executive Secretary*, G.R. No. 138570, Oct. 10, 2000]

Other terms for a treaty: act, protocol, agreement, *compromis d' arbitrage*, concordat, convention, declaration, exchange of notes, pact, statute, charter and *modus vivendi*.

Note: It is the President who **RATIFIES** a treaty (not the Senate), the Senate merely **CONCURS**. [*Bayan v. Executive Secretary*, *supra*]

The President *cannot be compelled* to submit a treaty to the Senate for concurrence; she has the *sole power* to submit it to the Senate and/or to ratify it. [*Bayan Muna v. Romulo* (2011)]

Military Bases Treaty

Art. XVIII, Sec. 25. After the expiration in 1991 of the Agreement between the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.

The President, however, may enter into an executive agreement on foreign military bases, troops, or facilities, if:

- (a) it is not the instrument that allows the presence of foreign military bases, troops, or facilities; or
- (b) it merely aims to implement an existing law or treaty

Sec. 25 refers solely to the initial entry of the foreign military bases, troops, or facilities.

To determine **whether a military base or facility in the Philippines**, which houses or is accessed by **foreign military troops**, is **foreign or remains a Philippine military base or facility**, the legal standards are:

- (a) independence from foreign control;
- (b) sovereignty and applicable law; and
- (c) national security and territorial integrity.

[*Saguisag v. Executive Secretary*, G.R. No. 212426 (2016)] (N.B. Outside of the bar coverage)

Visiting Forces Agreement (VFA)

The VFA, which is the instrument agreed upon to provide for the joint RP-US military exercises, is simply an *implementing agreement* to the main RP-US Military Defense Treaty. The VFA is therefore valid for it is a presence "allowed under" the RP-US Mutual Defense Treaty. Since the RP-US Mutual Defense Treaty itself has been ratified and concurred in by both the Philippine Senate and the US Senate, there is no violation of the Constitutional provision

resulting from such presence. [*Nicolas v. Romulo* (2009)]

Executive Agreements

- (1) Entered into by the President
- (2) Need no concurrence
- (3) Distinguished from treaties- International agreements involving political issues or changes in national policy and those involving international agreements of permanent character usually take the form of TREATIES. But the international agreements involving *adjustments in detail* carrying out well-established national policies and traditions and those involving a more or less *temporary character* usually take the form of EXECUTIVE AGREEMENTS. [*Commissioner of Customs vs. Eastern Sea Trading* (1961)]
- (4) Executive agreements may be entered into with other states and are effective even without the concurrence of the Senate. From the point of view of international law, there is no difference between treaties and executive agreements in their binding effect upon states concerned as long as the negotiating functionaries have remained within their powers. *The distinction between an executive agreement and a treaty is purely a constitutional one and has no international legal significance.* [USAFFE Veterans Assn. v. Treasurer (1959)]

An *executive agreement* that does not require the concurrence of the Senate for its ratification may not be used to amend a treaty that, under the Constitution, is the product of the ratifying acts of the Executive and the Senate. [*Bayan Muna v. Romulo* (2011)]

Two Classes of Executive Agreements

- (1) Agreements made purely as executive acts affecting external relations and independent of or without legislative authorization, which may be termed as *presidential agreements*; and

- (2) Agreements entered into in pursuance of acts of Congress, or *Congressional-Executive Agreements*.

Although the President may, under the American constitutional system enter into executive agreements *without* previous legislative authority, *he may not, by executive agreement, enter into a transaction which is prohibited by statutes enacted prior thereto.* He may not defeat legislative enactments that have acquired the status of law by indirectly repealing the same through an executive agreement providing for the performance of the very act prohibited by said laws. [*Gonzales v. Hechanova* (1963)]

Once the Senate performs the power to concur with treaties or exercise its prerogative within the boundaries prescribed by the Constitution, the concurrence cannot be viewed as an abuse of power, much less a grave abuse of discretion. [*Bayan v. Executive Secretary, supra*, on the constitutionality of the Visiting Forces Agreement]

Diplomatic Negotiations Privilege

While the final text of the Japan-Philippines Economic Partnership Agreement (JPEPA) may not be kept perpetually confidential, the offers exchanged by the parties during the negotiations continue to be privileged even after the JPEPA is published. The Japanese representatives submitted their offers with the understanding that “historic confidentiality” would govern the same. Disclosing these offers could impair the ability of the Philippines to deal not only with Japan but with other foreign governments in future negotiations. The objective of the privilege is to enhance the quality of agency decisions. In assessing claim of privilege for diplomatic negotiations, the test is whether the privilege being claimed is indeed supported by public policy. This privilege may be overcome upon “sufficient showing of need”. [*Akbayan v. Aquino* (2008)]

Deportation of Undesirable Aliens

The President may deport only according to grounds enumerated by law, otherwise it would be unreasonable and undemocratic. [*Qua Chee Gan v. Deportation Board* (1963)]

2 Ways of Deporting an Undesirable Alien

- (1) *By order of the President* after due investigation, pursuant to [now Ch. 3, Bk. III of the Admin. Code of 1987];
- (2) *By the Commissioner of Immigration* under Section 37 of the Immigration Law [*Qua Chee Gan v. Deportation Board, supra*]

Scope of the power

- (1) The Deportation Board can entertain deportation based on grounds not specified in Sec. 37 of the Immigration Law. The Board has jurisdiction to investigate the alien even if he had not been convicted yet.
- (2) The President's power to deport aliens and to investigate them subject to deportation are provided in [now, Chapter 3, Book III, of the Admin. Code of 1987].
- (3) The State has inherent power to deport undesirable aliens. This power is exercised by the President.
- (4) There is no legal or constitutional provision defining the power to deport aliens because the intention of the law is to grant the Chief Executive the full discretion to determine whether an alien's residence in the country is so undesirable as to affect the security, welfare or interest of the state.
- (5) The Chief Executive is the sole and exclusive judge of the existence of facts which would warrant the deportation of aliens. [*Go Tek v. Deportation Board* (1977)]

B.7. POWERS RELATIVE TO APPROPRIATION MEASURES

Contracting and guaranteeing foreign loans

Requisites for contracting and guaranteeing foreign loans:

- (1) With the concurrence of the monetary board [Art. VII, Sec. 20]
- (2) Subject to limitations as may be provided by law [Art. XII, Sec. 2]
- (3) Information on foreign loans obtained or guaranteed shall be made available to the public [Art. XII, Sec. 2]

Cf. Republic Act 4860

An Act Authorizing The President Of The Philippines To Obtain Such Foreign Loans And Credits, Or To Incur Such Foreign Indebtedness, As May Be Necessary To Finance Approved Economic Development Purposes Or Projects, And To Guarantee, In Behalf Of The Republic Of The Philippines, Foreign Loans Obtained Or Bonds Issued By Corporations Owned Or Controlled By The Government Of The Philippines For Economic Development Purposes Including Those Incurred For Purposes Of Re-Lending To The Private Sector, Appropriating The Necessary Funds Therefor, And For Other Purposes (Approved, September 8, 1966.)

Role of Congress

The President does *not* need prior approval by the Congress

- (1) Because the Constitution places the power to check the President's power on the *Monetary Board*;
- (2) BUT Congress may provide guidelines and have them enforced through the Monetary Board

The Philippine Debt Negotiating Team, composed of the Secretary of Finance, Governor of Central Bank, and the National Treasurer, may contract and guarantee foreign loans under the *Doctrine of Qualified Political Agency*. However, the President may repudiate the very acts performed in this regard by the alter ego. [*Constantino v. Cuisia* (2005)]

Prepare and Submit the Budget

Art. VII, Sec. 22. The President shall submit to Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures.

The budget is the *plan* indicating:

- (1) *Expenditures* of the government,
- (2) *Sources of financing*, and
- (3) *Receipts* from revenue-raising measures.

The *budget* is the *upper limit* of the appropriations bill to be passed by Congress. Through the budget, therefore, the President reveals the priorities of the government.

Fixing of tariff rates [Art. VI, Sec. 28]

The Congress may, by law, authorize the President to fix (1) within specified limits, and (2) subject to such limitations and restrictions as it may impose:

- (a) Tariff rates;
- (b) Import and export quotas;
- (c) Tonnage and wharfage dues;
- (d) Other duties or imposts within the framework of the national development program of the Government.

Rationale for delegation: Highly technical nature of international commerce, and the need to constantly and with relative ease adapt the rates to prevailing commercial standards.

B.8. DELEGATED POWERS

Principle: The President, under martial rule or in a revolutionary government, may exercise delegated legislative powers. [See Art. VI, Sec. 23[2]] Congress may delegate legislative powers to the president in times of war or in other national emergency. [BERNAS]

Emergency powers [Art. VI, Sec. 23.]

- (1) In times of war or other national emergency, the Congress, may, by law, authorize the President, for a limited period, and subject to such restrictions as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy
- (2) Unless sooner withdrawn by resolution of the Congress, such powers shall cease upon the next adjournment thereof

Different from the Commander-in-Chief clause:

- (1) When the President acts under the Commander-in-Chief clause, he acts under a *constitutional grant* of military power, which may include the law-making power.
- (2) When the President acts under the emergency power, he acts under a *Congressional delegation* of law-making power.

Meaning of "*power necessary and proper*" - Power to issue rules and regulations

This power is:

- (1) For a limited period; and
- (2) Subject to such restrictions as Congress may provide.

When Emergency Powers Cease

- (1) *According to the text of the Constitution* - The power ceases:
 - (a) Upon being *withdrawn* by resolution of the Congress; or
 - (b) If Congress fails to adopt such resolution, upon the *next (voluntary) adjournment* of Congress.

(2) *According to Cases*

- (a) The fact that Congress is able to meet in session uninterruptedly and adjourn of its own will prove that the *emergency no longer exists* to justify the delegation. [See *Araneta v. Dinglasan* (1949)], on Congress' grant of emergency powers under C.A. 671; Court held that C.A. 671, being temporary, need not be expressly repealed by a law)

- (b) This rule or the termination of the grant of emergency powers is based on *decided cases*, which in turn became *Art. VII, Sec. 15 of the 1973 Constitution*.
- (c) The specific power to continue in force laws and appropriations which would lapse or otherwise become inoperative is a limitation on the general power to exercise such other powers as the executive may deem necessary to enable the government to fulfill its responsibilities and to maintain and enforce its authority. [*Rodriguez v Gella (1953)*]

Inconsistency between the Constitution and the cases: [*Barlongay*]

- (1) The Constitution states that the emergency powers shall cease upon the next adjournment of Congress unless sooner withdrawn by resolution of Congress
- (2) Cases tell us that the emergency powers shall cease upon resumption of session.
- (3) Reconciling the two: it would not be enough for Congress to just resume session in order that the emergency powers shall cease. It has to pass a resolution withdrawing such emergency powers, otherwise such powers shall cease upon the next adjournment of Congress.

B.9. VETO POWER

General rule: All bills must be approved by the President before they become law.

Exceptions:

- (1) The veto of the President is overridden by 2/3 vote of all the Members of the House where it originated;
- (2) The bill lapsed into law because of the inaction of the President; and
- (3) The bill passed is the special law to elect the President and Vice-President.

This gives the President an actual hand in legislation. However, his course of action is only to approve it or veto it as a whole. (See *Legislative Power of Congress*)

It is true that the Constitution provides a mechanism for overriding a veto [Art. VI, Sec. 27(1)]. Said remedy, however, is available *only when the presidential veto is based on policy or political considerations* but not when the veto is claimed to be *ultra vires*. In the latter case, it becomes the duty of the Court to draw the dividing line where the exercise of executive power ends and the bounds of legislative jurisdiction begin. [*PHILCONSA v. Enriquez (1994)*]

B.10. RESIDUAL POWERS

General doctrine: The President has *unstated residual powers*, which are *implied from the grant of executive power* necessary for her to comply with her Constitutional duties, such as to safeguard and protect the general welfare. It includes powers unrelated to the execution of any provision of law. [See *Marcos v. Manglapus (1988)*]

In *Marcos v. Manglapus, supra*, the Court held that then-President Corazon Aquino had the power to prevent the Marcoses from returning to the Philippines on account of the volatile national security situation. This was limited only by two *standards*: (1) there must be a *factual basis* for the impairment of the Marcoses' right to return (as distinguished from their *right to travel*, which is a constitutional right); and (2) the impairment *must not be arbitrary*.

N.B. The decision was *pro hac vice*.

B.11. EXECUTIVE PRIVILEGE

See discussion under Presidential Privilege.

C. RULES ON SUCCESSION

C.1. PRESIDENT

Vacancy at the Beginning of the term	Death or permanent disability of the President-elect	Vice-President-elect shall become President	
	President-elect fails to qualify	Vice-President-elect shall act as President until the President-elect shall have qualified	
	President shall not have been chosen	Vice-President-elect shall act as President until a President shall have been chosen and qualified.	
	No President and Vice-President chosen nor shall have qualified, or both shall have died or become permanently disabled	Senate President or, in case of his inability, Speaker of the House of Representatives , shall act as President until a President or a Vice-President shall have been chosen and qualified.	In the event of inability of the SP and Speaker, Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or Vice-President shall have qualified.
Vacancy during the term	Death, permanent disability, removal from office, or resignation of the President	Vice-President shall become President	
	Death, permanent disability, removal from office, or resignation of President AND Vice-President	Senate President or, in case of his inability, the Speaker of the House of Representatives , shall act as President until a President or Vice-President shall be elected and qualified.	Congress, by law, shall provide for the manner in which one is to act as President in the event of inability of the SP and Speaker.
Temporary disability	When President transmits to the Senate President and the Speaker of the House his written declaration that he is unable to discharge the powers and duties of his office	Such powers and duties shall be discharged by the Vice-President as Acting President , until the President transmits to them a written declaration to the contrary	
	When a Majority of all the members of the Cabinet transmit to the Senate President and the Speaker their written declaration that the President is unable to discharge the powers and duties of his office	The Vice-President shall immediately assume the powers and duties of the office as Acting President until the President transmits to the Senate President and Speaker his written declaration that no inability exists.	
	If after the President transmits his declaration of his ability to discharge his office, and a majority of members of the Cabinet transmit within 5 days to the Senate President and Speaker their written declaration that the President is unable to discharge the powers and duties of his office, Congress shall decide the issue.	Congress determines by a 2/3 vote of both houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as President; otherwise, the President shall continue exercising the powers and duties of his office	Congress shall convene, if not in session, within 48 hours. And if within 10 days from receipt of the last written declaration or, if not in session, within 12 days after it is required to assemble.

C.2. CONSTITUTIONAL DUTY OF CONGRESS IN CASE OF VACANCY IN THE OFFICES OF THE PRESIDENT AND VICE-PRESIDENT

[Art. VII, Sec. 10] – The Congress shall, at 10AM of the 3rd day after the vacancy in the offices of the President and Vice-President occurs:

- (1) Convene in accordance with its rules without need of a call; and
- (2) Within seven days, enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call.

The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall become law upon its approval on third reading by the Congress. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

C.3. VACANCY IN THE OFFICE OF THE VICE-PRESIDENT

[Art. VII, Sec. 9.] The President shall nominate a Vice-President from among the members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the members of both houses of Congress voting separately.

V. Judicial Department

A. CONCEPTS

A.1. JUDICIAL POWER

Judicial power includes the duty of the courts of justice to:

- (1) Settle actual controversies involving rights which are legally demandable and enforceable; and
- (2) To determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The second clause effectively limits the doctrine of “*political question*.” [See *Francisco v. House of Rep. (2003)*]

Vested in: (a) Supreme Court and (b) such lower courts as may be established by law.

A.2. JUDICIAL REVIEW

<i>Judicial Power</i>	<i>Judicial Review</i>
Where vested	
Supreme Court Lower courts	Supreme Court Lower courts
Definition	
Duty to <i>settle actual controversies</i> involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government [Art. VIII, Sec. 1, par. 2]	Power of the courts to <i>test the validity of executive and legislative acts</i> in light of their conformity with the Constitution [Angara v. Electoral Commission (1936)]
Requisites for exercise	
<i>Jurisdiction</i> – Power to decide and hear a case and execute a decision thereof	(1) Actual case or controversy (2) <i>Locus Standi</i> (3) Question raised at the earliest opportunity (4) <i>Lis mota</i> of the case

Judicial Supremacy

When the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. [*Angara v. Electoral Commission* (1936)]

Functions of Judicial Review

- (1) Checking
- (2) Legitimizing
- (3) Symbolic

Essential Requisites for Judicial Review

(A) Actual case or controversy

This means that there must be a genuine conflict of legal rights and interests which can be resolved through judicial determination. [*John Hay v. Lim* (2003)]

This precludes the courts from entertaining the following:

- (1) Request for an *advisory opinion* [*Guingona v. CA* (1998)]
- (2) Cases that are or have become *moot and academic*, i.e. cease to present a justiciable controversy due to supervening events [*David v. Macapagal-Arroyo* (2006)].

(B) Locus standi

Legal standing or *locus standi* refers to a party's personal and substantial interest in a case, arising from the direct injury it has sustained or will sustain as a result of the challenged governmental action. Legal standing calls for more than just a generalized grievance. The term "interest" means a material interest, an

interest in issue affected by the governmental action, as distinguished from mere interest in the question involved, or a mere incidental interest. Unless a person's constitutional rights are adversely affected by a statute or governmental action, he has no legal standing to challenge the statute or governmental action. [*CREBA v. Energy Regulatory Commission* (2010)]

A proper party is one who has sustained or is in imminent danger of sustaining a **direct injury as a result of the act complained of** [*IBP v. Zamora* (2000)]. The alleged injury must also be capable of being redressed by a favorable judgment [*Tolentino v. COMELEC* (2004)].

- (1) Requires partial consideration of the merits of the case in view of its constitutional and public policy underpinnings [*Kilosbayan vs Morato*, (1995)]
- (2) May be **brushed aside** by the court as a mere procedural technicality in view of **transcendental importance** of the issues involved [*Kilosbayan v. Guingona* (1994); *Tatad v. DOE* (1995)].
- (3) Who are **proper parties**?
 - (a) Taxpayers, when public funds are involved. [*Tolentino v. Comelec* (2004)]
 - (b) Government of the Philippines, when questioning the validity of its own laws. [*People v. Vera* (1937)]
 - (c) Legislators, when the powers of Congress are being impaired. [*PHILCONSA v. Enriquez*, (1994)]
 - (d) Citizens, when the enforcement of a public right is involved. [*Tañada vs Tuvera*, (1985)]
 - (e) Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws [*Resident Marine Mammals of the Protected Seascape Tanon Strait v. Reyes*, G.R. No. 180771 (2015)]

Special Rules on Standing (Requisites)

Taxpayer	(1) Appropriation; (2) Disbursement
Citizen	(1) Direct injury, (2) Public right; OR Art. VII, Sec. 18 (on the sufficiency of the factual basis for martial law or suspension of the privilege of the writ of <i>Habeas Corpus</i>)
Voter	Right of suffrage is involved
Legislator	(1) Authorized; (2) Affects legislative prerogatives (i.e. a <i>derivative suit</i>)
Third-Party Standing	(1) Litigants must have <i>injury- in-fact</i> ; (2) Litigants must <i>have close relation to the third-party</i> ; and (3) There is an <i>existing hindrance</i> to the third party's ability to protect its own interest. [<i>White Light v. City of Manila</i> (2009)]
Enforcement of Environmental Laws	(1) Any Filipino citizen; (2) In representation of others, including minors or generations yet unborn [<i>Resident Marine Mammals of the Protected Seascape Tanon Strait v. Reyes</i> , G.R. No. 180771 (2015)]

(C) Constitutional question must be raised at the earliest possible opportunity**Exceptions:**

- (a) In criminal cases, at the discretion of the court;
- (b) In civil cases, if necessary for the determination of the case itself; and
- (c) When the jurisdiction of the court is involved

N.B. The reckoning point is the first competent court. The question must be raised at the **first court with judicial review powers**. Hence, the failure to raise the constitutional question before

the NLRC is not fatal to the case. (See *Serrano v. Gallant Maritime Services*, G.R. No. 167614, Mar. 24, 2009)

(D) *Lis Mota*

Decision on the constitutional question must be **determinative of the case itself**.

The reason for this is the doctrine of **separation of powers** which requires that due respect be given to the co-equal branches, and because of the grave consequences of a declaration of unconstitutionality. [*De la Llana v. Alba* (1982)]

(i) Operative fact doctrine

General Rule: The *interpretation* (or declaration) of unconstitutionality is *retroactive* in that it *applies from the law's effectivity*

Exception: Operative fact doctrine

Subsequent declaration of unconstitutionality does not nullify all acts exercised in line with [the law]. The past cannot always be erased by a new judicial declaration. [*Municipality of Malabang v. Benito* (1969), citing *Chicot County*]

Effect of a Declaration of Unconstitutionality

- (1) **Orthodox view** - An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative, as if it had not been passed at all.
- (2) **Modern view** - Certain legal effects of the statute prior to its declaration of unconstitutionality may be recognized.

(ii) Moot questions

Ripeness of the controversy: The issue must be raised not too early that it is conjectural or anticipatory, nor too late that it becomes moot.

General Rule: Courts will not decide questions that have become moot and academic.

Exception: Courts will still decide if:

- (a) There is a grave violation of the Constitution;
- (b) The situation is of exceptional character and paramount public interest is involved;
- (c) [Symbolic Function] The constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; and
- (d) The case is capable of repetition yet evading review. [*David v. Macapagal-Arroyo* (2006)]

(iii) Political question doctrine

The term “political question” refers to: (1) matters to be exercised by the *people in their primary political capacity*; or (2) those specifically *delegated to some other department* or particular office of the government, with *discretionary power* to act. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure. [*Tañada v. Cuenco* (1957)]

In recent years, the Court has set aside this doctrine and assumed jurisdiction whenever it found constitutionally-imposed limits on the exercise of powers conferred upon the Legislative and Executive branches [BERNAS].

Political Question	Justiciable Controversy
<i>Aleandrino v. Quezon</i> (1924): The legislature's exercise of disciplinary power over its member is not to be interfered with by the Court.	<i>Avelino v. Cuenco</i> , (1949): election of Senate President was done without the required <i>quorum</i>
<i>Vera v. Avelino</i> , (1946): inherent right of the legislature to determine who shall be admitted to its membership	<i>Tañada v. Cuenco</i> , (1957): The selection of the members of the Senate Electoral Tribunal is subject to constitutional limitations.
<i>Severino v. Governor-General</i> (1910): Mandamus and injunction could not lie to enforce or restrain a duty which is discretionary (calling a special local election).	<i>Cunanan v. Tan, Jr.</i> , (1962): The Commission on Appointments is a constitutional creation and does not derive its power from Congress.
<i>Manalang v. Quidrino</i> , (1954): President's appointing power is not to be interfered with by the Court.	<i>Lansang v. Garcia</i> (1971): Suspension of the privilege of the writ of <i>habeas corpus</i> is not a political question.
	<i>Javellana v. Executive Secretary</i> (1973): WON the 1973 Constitution had been ratified in accordance with the 1935 Constitution is justiciable. HOWEVER, the people may be deemed to have cast their favorable votes in the belief that in doing so they did the part required of them by Article XV, hence, it may be said that in its political aspect, which is what counts most, after all, said Article has been substantially complied with, and, in effect, the 1973 Constitution has been constitutionally ratified.

B. SAFEGUARDS OF JUDICIAL INDEPENDENCE

- (1) The SC is a constitutional body. It cannot be abolished nor may its membership or the manner of its meetings be changed by mere legislation. [Art. VIII, Sec. 4]
- (2) The members of the judiciary are not subject to confirmation by the CA.
- (3) The members of the SC may not be removed except by impeachment. [Art. IX, Sec. 2]
- (4) The SC may not be deprived of its minimum original and appellate jurisdiction as prescribed in Art. X, Sec. 5 of the Constitution. [Art. VIII, Sec. 2]
- (5) The appellate jurisdiction of the SC may not be increased by law without its advice and concurrence. [Art. VI, Sec. 30; *Fabian v. Desierto* (1988)]
- (6) The SC has administrative supervision over all lower courts and their personnel. (art. VIII, sec. 6.)

The rule prohibiting the institution of disbarment proceedings against an impeachable officer who is required by the Constitution to be a member of the bar as a qualification in office applies only during his or her tenure and does not create immunity from liability for possibly criminal acts or for alleged violations of the Code of Judicial Conduct or other supposed violations. Once the said impeachable officer is no longer in office because of his removal, resignation, retirement or permanent disability, the Court may proceed against him or her and impose the corresponding sanctions for misconduct committed during his tenure, pursuant to the Court's power of administrative supervision over members of the bar. [*In Re Biraogo* (2009)]

- (7) The SC has exclusive power to discipline judges of lower courts. [Art. VIII, Sec. 11]

The Ombudsman is duty bound to refer to the SC all cases against judges and court personnel, so SC can determine first

whether an administrative aspect is involved.

The Ombudsman cannot bind the Court that a case before it does or does not have administrative implications. [*Caoibes v. Ombudsman*, G.R. No. 132177, Jul. 19, 2001]

- (8) The members of the SC and all lower courts have security of tenure, w/c cannot be undermined by a law reorganizing the judiciary. [Id.]
 - (9) They shall not be designated to any agency performing quasi-judicial or administrative functions. [Art. VIII, Sec. 12]
- Administrative functions* are those that involve regulation of conduct of individuals or promulgation of rules to carry out legislative policy. Judges should render assistance to a provincial committee of justice (which is under DOJ supervision) only when it is *reasonably incidental* to their duties. [*In Re Manzano*, A.M. No. 8-7-1861-RTC, Oct. 5, 1988]
- (10) The salaries of judges may not be reduced during their continuance in office. [Art. VIII, Sec. 10]
 - (11) The judiciary shall enjoy fiscal autonomy. [Art. VIII, Sec. 3]

Fiscal autonomy means freedom from outside control. As the Court explained in *Bengzon v. Drilon*: As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission and the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a *guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require*. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions. [*In re: Clarifying and Strengthening the Organizational Structure and Set-up of*

the Philippine Judicial Academy, A.M. No. 01-1-04-SC]

The provision in the Charter of the GSIS, i.e., Section 39 of Republic Act No. 8291, which exempts it from "all taxes, assessments, fees, charges or duties of all kinds," cannot operate to exempt it from the payment of legal fees. Unlike the 1935 and 1973 Constitutions, which empowered Congress to repeal, alter or supplement the rules of the Supreme Court concerning pleading, practice and procedure, the 1987 Constitution removed this power from Congress. Hence, the Supreme Court now has the sole authority to promulgate rules concerning pleading, practice and procedure in all courts. [*GSIS v. Caballero* (2010)]

- (12) The SC alone may initiate rules of court. [Art. VIII, Sec. 5(5)]
- (13) Only the SC may order the temporary detail of judges. [Art. VIII, Sec. 5(3)]
- (14) The SC can appoint all officials and employees of the judiciary. [Art. VIII, Sec. 5(6)]

C. JUDICIAL RESTRAINT

The judiciary will not interfere with its co-equal branches when:

- (1) *There is no showing of grave abuse of discretion*
 - (a) *PPA v. Court of Appeals*: If there is no showing of grave abuse of discretion on the part of a branch or instrumentality of the government, the court will decline exercising its power of judicial review.
 - (b) *Chavez v. COMELEC*: Judicial review shall involve only those resulting in grave abuse of discretion by virtue of an agency's quasi-judicial powers, and not those arising from its administrative functions.
- (2) *The issue is a political question.*

Even when all requisites for justiciability have been met, judicial review will not be

exercised when the issue involves a *political question*.

But see Francisco v. House of Representatives (2001). At the same time, the Court has the *duty* to determine whether or not there has been grave abuse of discretion by any instrumentality of government under its *expanded judicial review* powers. (This allowed the SC to interfere in a traditionally purely political process, i.e. impeachment, when questions on compliance with Constitutional processes were involved.)

Guidelines for determining whether a question is political or not: [*Baker v. Carr* (369 US 186), as cited in *Estrada v. Desierto* (2001)]:

- (1) There is a textually demonstrable constitutional commitment of the issue to a political department;
- (2) Lack of judicially discoverable and manageable standards for resolving it;
- (3) The impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion;
- (4) Impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government;
- (5) An unusual need for unquestioning adherence to a political decision already made;
- (6) Potentiality of embarrassment from multifarious pronouncements by various departments on one question

D. APPOINTMENTS TO THE JUDICIARY

<i>Justices of SC and Collegiate Courts</i>	<i>RTC Judge (B.P. 129, Sec. 15)</i>	<i>MTC/ MCTC Judge (B.P. 129, Sec. 26)</i>
Citizenship		
Natural-born Filipino		
Age		
At least 40 years old	At least 35 years old	At least 30 years old
Experience		
15 years or more as a judge of a lower court or has been engaged in the practice of law in the PHL for the same period	(a) Has been engaged for at least 5 years in the <i>practice of law*</i> in the PHL; OR (b) has held public office in the PHL requiring admission to the practice of law as an indispensable requisite	
Tenure [Art. VIII, Sec. 11]		
Hold office during good behavior until they reach the age of 70 or become incapacitated to discharge their duties		
Character [Art. VIII, Sec. 7(3)]		
Person of proven competence, integrity, probity and independence		
<i>*"Practice of law" is not confined to litigation. It means any activity in and out of court, which requires the application of law, legal procedure, knowledge, training and experience. [Cayetano v. Monsod (1991)]</i>		

D.1. CONSTITUTIONAL REQUIREMENTS

Supreme Court Justice

- (1) Natural born citizens
- (2) At least 40 years of age
- (3) Engaged in the practice of law or a judge of 15 years or more
- (4) Must be of proven competence, integrity, probity and independence.

Lower Collegiate Courts

- (1) Natural born citizen
- (2) Member of the Philippine Bar

- (3) Must be of proven competence, integrity, probity and independence
- (4) Such additional requirements provided by law.

Lower Courts

- (1) Filipino citizens (Rules of the Judicial and Bar Council, Nov. 2000, Rule 2. Note the conflict between the Rules and B.P. 129; the Rules cite the Constitutional requirement, but disregarded the first clause of Art. VIII, Sec. 7(2), i.e. "The Congress shall prescribe the qualifications of judges of lower courts [...]")
- (2) Member of the Philippine Bar
- (3) Must be of proven competence, integrity, probity and independence.
- (4) Such additional requirements provided by law.

Note: In the case of judges of the lower courts, the Congress may prescribe other qualifications. (art.VIII, sec. 7[3].

D.2. JUDICIAL AND BAR COUNCIL

Composition

Ex-officio members [Art. VIII, Sec. 8(1)]

- (1) Chief Justice as ex-officio Chairman
- (2) Secretary of Justice
- (3) One representative of Congress

Regular members [Art. VIII, Sec. 8(1)]

- (1) Representative of the Integrated Bar
- (2) Professor of Law
- (3) Retired member of the SC
- (4) Representative of private sector

Secretary *ex-officio* [Art. VIII, Sec. 8(3)] – Clerk of Court of the SC, who shall keep a record of its proceedings; not a member of the JBC.

In the absence of the Chief Justice because of his impeachment, the **most Senior Justice of the Supreme Court**, who is **not an applicant for Chief Justice**, should participate in the deliberations for the selection of nominees for the said vacant post and preside over the

proceedings, pursuant to Section 12 of Republic Act No. 296, or the Judiciary Act of 1948. [*Famela Dulay v. Judicial and Bar Council*, GR No. 202143 (2012)]

Appointment, Tenure, Salary of JBC Members

Ex-officio members - None apply since the position in the Council is good only while the person is the occupant of the office.

Only ONE representative from Congress - Former practices of giving ½ vote or (more recently) 1 full vote each for the Chairmen of the House and Senate Committees on Justice is invalid.

The framers intended the JBC to be composed of 7 members only. *Intent is for each co-equal branch of gov't to have one representative.* There is no dichotomy between Senate and HOR when Congress interacts with other branches. But the SC is not in a position to say *who* should sit. [*Chavez v. JBC*, G.R. No. 202242, Jul. 17, 2012]

Regular members [Art. VIII, Sec. 8(2)] - The regular members shall be appointed by the President with the consent of the Commission on Appointments. The term of the regular members is 4 years.

But the term of those *initially* appointed shall be staggered in the following way so as to create continuity in the council:

- (1) IBP representative - 4 years
- (2) Law professor - 3 years
- (3) Retired justice - 2 years
- (4) Private sector - 1 year

Primary function: Recommend appointees to the judiciary; may exercise such other functions and duties as the SC may assign to it. [Art. VIII, Sec. 8(5)]

Supervisory authority of SC over JBC

Art. VIII, Sec. 8 provides: "A Judicial and Bar Council is hereby created under the supervision of the Supreme Court." The supervisory authority of the Court over the JBC covers the overseeing of compliance with its rules. [*Jardeleza v. Judicial and Bar Council*, G.R. No. 213181 (2014)]

D.3. PROCEDURE OF APPOINTMENT

The JBC shall submit a list of three nominees for every vacancy to the President. (art. VIII, sec. 9)



Any **vacancy in the Supreme Court** shall be filed within **ninety (90) days from the occurrence** thereof. [Art. VIII, Sec. 4(1)]

For **lower courts**, the President shall issue the **appointment within ninety (90) days from the submission** by the JBC of such list. [Art. VIII, Sec. 9]

The prohibition against midnight appointments does not apply to the judiciary. See *De Castro v. JBC*, (G.R. No. 191002, Mar. 17, 2010), discussed above.

D.4. DISQUALIFICATION FROM OTHER POSITIONS OR OFFICES

Art. VIII, Sec. 12. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

The SC and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected w/ the administering of judicial functions. [*Meralco v. Pasay Transportation Co.* (1932)]

A judge in the CFI shall not be detailed with the Department of Justice to perform administrative functions as this contravenes the doctrine of separation of powers. [*Garcia v. Macaraig*, (1972)]

E. SUPREME COURT

E.1. COMPOSITION

- (1) Chief Justice and 14 Associate Justices
- (2) May sit *en banc* or in divisions of three, five, or seven Members
- (3) Vacancy shall be filled within 90 days from the occurrence thereof

E.2. EN BANC AND DIVISION CASES

En banc – Cases decided with the concurrence of a *majority of the Members who actually took part in the deliberations and voted*.

Instances when the SC sits En Banc:

- (1) Those involving the Constitutionality, application, or operation of: [TOIL-PI-POO]
 - (a) Treaty
 - (b) Orders
 - (c) International or executive agreement
 - (d) Law
 - (e) Presidential decrees
 - (f) Instructions
 - (g) Proclamations
 - (h) Ordinances
 - (i) Other regulations
- (2) (B) Exercise of the power to Discipline judges of lower courts, or order their dismissal [Art. VIII, Sec. 11]
- (3) Discipline of judges can be done by a division, BUT *En Banc* decides cases for dismissal, disbarment, suspension for more than 1 year, or fine of more than P10,000. [*People v. Gacott*, G.R. No. 116049, Jul. 13, 1995]
- (4) (C) Cases or matters heard by a Division where the required number of votes to decide or resolve (the majority of those who took part in the deliberations on the issues in the case and voted thereon, and

in no case less than 3 members) is not met. [Art. VIII, Sec. 4(3)]

- (5) Modifying or reversing a doctrine or principle of law laid down by the court in a decision rendered en banc or in division [Art. VIII, Sec. 4(3)]
- (6) Actions instituted by citizen to test the validity of a proclamation of Martial law or suspension of the privilege of the writ [Art. VIII, Sec. 18]
- (7) When sitting as Presidential Electoral Tribunal [Art. VIII, Sec. 4, par. 7]
- (8) All Other cases which under the Rules of Court are required to be heard by the SC en banc. [Art. VIII, Sec. 4(2)]

Requirement and Procedures in Divisions

- (1) Cases decided with the concurrence of a majority of the Members who actually took part in the deliberations and voted
- (2) In no case without the concurrence of *at least three* of such Members
- (3) When required number is not obtained, the case shall be decided en banc.
 - (a) Cases v. Matters. Only cases are referred to En Banc for decision when required votes are not obtained.
 - (b) Cases are of first instance; *matters* are those after the first instance, e.g. MRs and post-decision motions.
 - (c) Failure to resolve a motion because of a tie does not leave case undecided. *MR is merely lost*. [See *Fortrich v. Corona*, G.R. No. 131457; Aug. 19, 1999]

The SC En Banc is *not* an appellate court vis-à-vis its Divisions. The only constraint is that any doctrine or principle of law laid down by the Court, either rendered en banc or in division, may be overturned or reversed only by the Court sitting en banc. [*Firestone Ceramics v. CA*, (2001)]

E.3. PROCEDURAL RULE-MAKING

Art. VIII, Sec. 5. The Supreme Court shall have the following powers: [...]

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged.

The 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. The power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive. [*Echegaray v. Secretary of Justice* (1991)]

Because of Art. VIII, Sec. 5, Congress may no longer grant legislative exemptions from payment of court fees. [*Baguio Market Vendors Multi-Purpose Cooperative v. Cabato-Cortes*, G.R. No. 165922 (2010)]

Limitations:

- (1) Shall provide a simplified and inexpensive procedure for speedy disposition of cases
- (2) Uniform for all courts in the same grade
- (3) Shall *not* diminish, increase or modify substantive rights

E.4. ADMINISTRATIVE SUPERVISION OVER LOWER COURTS

Administrative Powers of the Supreme Court

- (1) Assign temporarily judges of lower courts to other stations as public interest may require;
- (2) Shall *not* exceed 6 months without the consent of the judge concerned
- (3) Order a change of venue or place of trial to avoid a miscarriage of justice;
- (4) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law;
- (5) Supervision over all courts and the personnel thereof;

- (6) Discipline judges of lower courts, or order their dismissal.

Period for Deciding Cases [Art. VIII, Sec. 15(1)]

Supreme Court	Lower Collegiate Courts	Other Lower Courts
24 months	12 months, unless reduced by the SC	3 months, unless reduced by the SC

Notes:

(1) Period counted from date of submission.

(2) Case deemed submitted upon filing of the last pleading, brief or memorandum required by the Rules or the court. [Sec. 15(2)]

Upon expiration of the period, the Chief Justice or presiding judge shall issue a certification stating why the decision or resolution has not been rendered within the period. [Sec. 15(3)]

This provision is **merely directory** and failure to decide on time would not deprive the corresponding courts of jurisdiction or render their decisions invalid. [*De Roma v. CA* (1987)]

The failure to decide cases within 90-day period required by law constitutes a **ground for administrative liability** against the defaulting judge. But **it does not make the judgment a nullity**. The judgment is valid. [*People v. Mendoza* (2001)]

Even when there is delay and no decision or resolution is made within the prescribed period, there is no automatic affirmance of the appealed decision. [*Sesbreño v CA* (2008)]

The Sandiganbayan, while of the same level as the Court of Appeals, functions as a trial court. Therefore the period for deciding cases which applies to the Sandiganbayan is the three (3) month period, not the twelve (12) month period. [*In Re Problems of Delays in Cases before the Sandiganbayan* (2001)]

E.5. ORIGINAL AND APPELLATE JURISDICTION

Original Jurisdiction [Art. VIII, sec. 5(1)]

- (1) Cases affecting ambassadors, other public ministers and consuls
- (2) Petition for *certiorari*
- (3) Petition for *prohibition*
- (4) Petition for *mandamus*
- (5) Petition for *quo warranto*
- (6) Petition for *habeas corpus*

Original Jurisdiction [Art. VIII, Sec. 5(2)] – on appeal or *certiorari* (as the Rules of Court provide), SC may **review, revise, reverse, modify, or affirm final judgments and orders** of lower courts in:

- (1) Cases involving the **constitutionality or validity** of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation
- (2) Cases involving the **legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto**
- (3) Cases in which the **jurisdiction of any lower court** is in issue
- (4) Criminal cases where the penalty imposed is *reclusion perpetua* or higher.
- (5) Cases where only a **question of law** is involved.

F. JUDICIAL PRIVILEGE

See SC Resolution dated February 14, 2012, "In Re: Production of Court Records and Documents and the Attendance of Court officials and employees as witnesses under the subpoenas of February 10, 2012 and the various letters for the Impeachment Prosecution Panel dated January 19 and 25, 2012."

Background: The Senate Impeachment Court (during the Impeachment Trial of Chief Justice Corona), issued a *subpoena ad testificandum et duces tecum* for certain

documents relating to the FASAP cases, the League of Cities cases, and *Gutierrez v. House Committee on Justice*, as well as the attendance of certain court officials. The Supreme Court refused, invoking *judicial privilege*.

Judicial Privilege

A form of **deliberative process privilege**; Court records which are *pre-decisional* and *deliberative* in nature are thus protected and cannot be the subject of a subpoena

A document is **predecisional** if it precedes, in temporal sequence, the decision to which it relates.

A material is **deliberative** on the other hand, if it reflects the give-and-take of the consultative process. The key question is whether disclosure of the information would **discourage** candid discussion within the agency.

Judicial Privilege is an **exception** to the **general rule of transparency** as regards access to court records.

Court deliberations are traditionally considered **privileged communication**.

Summary of Rules

The following are **privileged** documents or communications, and are not subject to disclosure:

- (1) **Court actions** such as the **result of the raffle of cases and the actions taken by the Court** on each case included in the agenda of the Court's session on acts done material to pending cases, except where a party litigant requests information on the result of the raffle of the case, pursuant to Rule 7, Section 3 of the Internal Rules of the Supreme Court (IRSC);
- (2) **Court deliberations** or the deliberations of the Members in court sessions on cases and matters pending before the Court;
- (3) **Court records** which are "pre-decisional" and "deliberative" in nature, in particular, documents and other communications

which are part of or related to the deliberative process, i.e., notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers.

Additional Rules:

- (1) Confidential Information secured by justices, judges, court officials and employees in the course of their official functions, mentioned in (2) and (3) above, **is privileged even after their term of office.**
- (2) Records of *cases that are still pending* for decision are privileged materials that cannot be disclosed, except only for pleadings, orders and resolutions that have been made available by the court to the general public.
- (3) The **principle of comity** or inter-departmental courtesy demands that the highest officials of each department be exempt from the compulsory processes of the other departments.
- (4) **These privileges belong to the Supreme Court as an institution**, not to any justice or judge in his or her individual capacity. Since the Court is higher than the individual justices or judges, no sitting or retired justice or judge, not even the Chief Justice, may claim exception **without the consent of the Court.**

G. REQUIREMENTS FOR DECISIONS AND RESOLUTIONS

Art. VIII, Sec. 13. The conclusions of the Supreme Court in any case submitted to it for decision en banc or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Members who took no part, or dissented, or abstained from a decision or resolution, must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

Art. VIII, Sec. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefore.

A "Resolution" is not a "Decision" within the meaning of Art. VIII, Sec. 14. This mandate applies only in cases "submitted for decision," i.e., given due course and after the filing of Briefs or Memoranda and/or other pleadings, as the case may be. It does not apply to an Order or Resolution refusing due course to a Petition for Certiorari. [*Nunal v. COA*, G.R. No. 78648 (1989)]

VI. Constitutional Commissions

Q: What are the constitutional commissions?

A: (1) The Commission on Elections, (2) Commission on Audit, and (3) Civil Service Commission

Q: May Congress revoke a constitutional commission's rule-making power?

A: NO. The grant of a constitutional commission's rule-making power is untouchable by Congress, absent a constitutional amendment or revision.

Q: Is a constitutional commission's rule-making power subject to the laws passed by Congress?

A: YES. The laws that it interprets and enforces fall within the prerogative of Congress. As an administrative agency, its quasi-legislative power is subject to the same limitations applicable to other administrative bodies

[Trade and Investment Development Corporation of the Philippines v. Civil Service Commission, G.R. No. 182249 (2013)]

A. CONSTITUTIONAL SAFEGUARDS TO ENSURE INDEPENDENCE OF COMMISSIONS

Q: Are there any safeguards in place to ensure the independence of the commissions?

A: Yes –

- (1) They are constitutionally created, hence **may not be abolished** by statute.
- (2) Each commission is vested with powers and functions which **cannot be reduced by statute**.
- (3) Independent constitutional bodies.
- (4) The Chairmen and members **cannot be removed except by impeachment**.
- (5) Fixed term of office of 7 years.
- (6) The Chairmen and members **may not be appointed in an acting capacity**.
- (7) The salaries of the Chairmen and members **may not be decreased** during their tenure.
- (8) The Commissions enjoy **fiscal autonomy**.
- (9) Each Commission may promulgate its own procedural rules, provided they do not diminish, increase or modify substantive rights [though subject to disapproval by the Supreme Court].
- (10) The Commission may appoint their own officials and employees in accordance with Civil Service Law.

A.1 PROMOTIONAL APPOINTMENT OF COMMISSIONER TO CHAIRMAN

[Funa v. Commission on Audit (2012)]

Article IX-D, Sec. 1(2) **does not prohibit** a promotional appointment from commissioner to chairman as long as:

- (a) The commissioner has **not served the full term of 7 years; and**
- (b) The appointment to any vacancy shall be **only for the unexpired portion of the term** of the predecessor. [Sec. 1(2), Article IX-D]
- (c) The promotional appointment must conform to the rotational plan or the staggering of terms in the commission membership.

Court's Rulings on Sec. 1(2), Art. IX-D:

- (1) The appointment of members of any of the three constitutional commissions, **after the expiration of the uneven terms of office of the first set of commissioners**, shall always be for a fixed term of seven (7) years; an appointment for a lesser period is void and unconstitutional.

The appointing authority cannot validly shorten the full term of seven (7) years in case of the expiration of the term as this will result in the **distortion of the rotational system** prescribed by the Constitution.

- (2) Appointments to vacancies resulting from certain causes (death, resignation, disability or impeachment) shall only be for the **unexpired portion of the term** of the predecessor; such appointments cannot be less than the unexpired portion [as it will disrupt the staggering].
- (3) Members of the Commission who were appointed for a full term of seven years and who served the entire period, are **barred from reappointment to any position in the Commission**. The first appointees in the Commission under the Constitution are also covered by the prohibition against reappointment.
- (4) A commissioner who resigns after serving in the Commission for less than seven years is **eligible for an appointment as Chairman for the unexpired portion of the term of the departing chairman**. Such appointment is not covered by the ban on reappointment, **provided that the**

aggregate period of the length of service will not exceed seven (7) years and provided further that the *vacancy in the position of Chairman resulted from death, resignation, disability or removal by impeachment*. This is not a reappointment, but effectively a new appointment

- (5) Any member of the Commission *cannot* be appointed or designated in a temporary or acting capacity.

A.2 TERM OF OFFICE OF EACH COMMISSION MEMBER

[*Gaminde v. Commission on Audit*, G. R. No. 140335 (2000)]

The terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees, in order that the expiration of the first terms of seven, five and three years should lead to the regular recurrence of the two-year interval between the expiration of the terms. This common appropriate starting point must be on February 02, 1987, the date of the adoption of the 1987 Constitution.

Term – the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another.

Tenure – term during which the incumbent actually holds the office.

The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent.

B. POWERS AND FUNCTIONS OF EACH COMMISSION

B.1. CIVIL SERVICE COMMISSION

Art. IX–B, Sec. 3. The Civil Service Commission, as the **central personnel agency** of the Government, shall **establish a career service** and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall **strengthen the merit and rewards system, integrate all human resources development programs** for all levels and ranks, and **institutionalize a management climate conducive to public accountability**. It shall submit to the President and the Congress an annual report on its personnel programs.

Functions:

- (1) In the exercise of its powers to implement R.A. 6850 (granting civil service eligibility to employees under provisional or temporary status who have rendered seven years of efficient service), the CSC enjoys a wide latitude of discretion, and may not be compelled by *mandamus*. (*Torregoza v. Civil Service Commission*, 211 SCRA 230).
- (2) Under the Administrative Code of 1987, the Civil Service Commission has the power to **hear and decide administrative cases instituted before it directly or on appeal**, including contested appointments.
- (3) The Commission has original jurisdiction to hear and decide a complaint for cheating in the Civil Service examinations committed by government employees. [*Cruz v. CSC*, (2001)]
- (4) It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure, that decisions of lower level officials (in cases involving personnel actions) be appealed to the agency head, then to the Civil Service Commission. [*Olanda v. Bugayong* (2003)]

Scope of the Civil Service

Embraces all branches, subdivisions, instrumentalities and agencies of the Government, including GOCCs with original charters. [Sec. 2(1), Art. IX-B].

The University of the Philippines, having an original charter, is clearly part of the CSC. [*UP v. Regino*, 221 SCRA 598]

Composition:

A Chairman and 2 Commissioners

Qualifications: [Art. IX-B, Sec. 1(1)]

- (1) Natural-born citizens of the Philippines;
- (2) At the time of their appointment, at least 35 years of age;
- (3) With proven capacity for public administration; and
- (4) Must not have been candidates for any elective position in the election immediately preceding their appointment.

Classes of Service:

- (1) Career Service – Characterized by entrance (a) based on merit and fitness to be determined, as far as practicable, by competitive examinations, OR (b) based on highly technical qualifications; with opportunity for advancement to higher career positions and security of tenure.
 - (a) Open career positions – Where prior qualification in an appropriate examination is required.
 - (b) Closed career positions – e.g. scientific or highly technical in nature;
 - (c) Career Executive Service – e.g. undersecretaries, bureau directors
 - (d) Career Officers – Other than those belonging to the Career Executive Service who are appointed by the President, e.g. those in the foreign service
 - (e) Positions in the AFP although governed by a different merit system
 - (f) Personnel of GOCCs with original charters

- (g) Permanent laborers, whether skilled, semi-skilled or unskilled

- (2) Non-career Service – Characterized by entrance on bases other than those of the usual tests utilized for the career service; **tenure limited to a period specified by law**, or which is co-terminus with that of the appointing authority or subject to his pleasure, or which is limited to the duration
 - (a) Elective officials, and their personal and confidential staff;
 - (b) Department heads and officials of Cabinet rank who hold office at the pleasure of the President, and their personal and confidential staff;
 - (c) Chairmen and members of commissions and bureaus with fixed terms;
 - (d) Contractual personnel;
 - (e) Emergency and seasonal personnel.

Appointments in the Civil Service

General Rule: Made only according to merit and fitness to be determined, as far as practicable, by competitive examination

Exceptions:

- (1) **Policy determining** – Where the officer lays down principal or fundamental guidelines or rules; or formulates a method of action for government or any of its subdivisions; e.g. department head.
- (2) **Primarily confidential** – Denoting not only confidence in the aptitude of the appointee for the duties of the office but primarily **close intimacy which ensures freedom of intercourse** without embarrassment or freedom from misgivings or betrayals on confidential matters of state [*De los Santos v. Mallare*, 87 Phil 289]; OR one declared to be so by the President of the Philippines upon the recommendation of the CSC [*Salazar v. Mathay*, 73 SCRA 285]
- (3) **Highly technical** – Requires possession of technical skill or training in supreme degree. [*De los Santos v. Mallare*, *supra*]

Disqualifications:

- (1) No candidate who has lost in any election shall within 1 year after such election, be appointed to any office in the Government or any GOCC or in any of its subsidiaries. [Art. IX-B, Sec. 6]
- (2) No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure. [Art. IX-B, Sec. 7[1]]
- (3) Unless otherwise allowed by law OR by the primary functions of his position, **no appointive official shall hold any other office or employment in the Government** or any subdivision, agency or instrumentality thereof including GOCCs or their subsidiaries. [Art. IX-B, Sec. 7(2)]
- (4) No officer or employee in the civil service shall engage directly or indirectly, in **any electioneering or partisan political activity**. [Art. IX-B, sec. 2(4)]

B.2. COMMISSION ON ELECTIONS

Functions and Powers

- (1) Enforce all laws relating to the conduct of election, plebiscite, initiative, referendum and recall.

Initiative – The power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for that purpose. There are 3 systems of initiative: Initiative on the Constitution, initiative on statutes, and initiative on local legislation. [R.A. 6735, Sec. 2(a)]

Referendum – The power of the electorate to approve or reject legislation through an election called for that purpose. There are 2 classes: referendum on statutes or referendum on local laws. [R.A. 6735, Sec. 2(c)].

Recall – The termination of official relationship of a local elective official for loss of confidence prior to the expiration of his term through the will of the electorate.

Plebiscite – The submission of constitutional amendments or important legislative measures to the people for ratification.

- (2) Recommend to the Congress effective measures to **minimize election spending, and to prevent and penalize all forms of election frauds**, offenses, malpractices, and nuisance candidacies.
- (3) Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.
- Power to declare failure of election** – The COMELEC may exercise such power *motu proprio* or upon a verified petition, and the hearing of the case shall be summary in nature. [*Sison v. COMELEC*, G.R. No. 134096, March 3, 1999]
- (4) Decide **administrative questions** pertaining to election **except the right to vote** (the jurisdiction of which is with the judiciary).
- (5) File petitions in court for inclusion or exclusion of voters.

- (6) Investigate and prosecute cases of violations of election laws.

The COMELEC has *exclusive jurisdiction* to investigate and prosecute cases for violations of election laws. [*De Jesus v. People*, 120 SCRA 760]

Thus, the trial court was in error when it dismissed an information filed by the Election Supervisor because the latter failed to comply with the order of the Court to secure the concurrence of the Prosecutor. [*People v. Inting*, 187 SCRA 788]. However, the COMELEC may *validly delegate* this power to the Provincial Fiscal. [*People v. Judge Basilia* 179 SCRA 87]

- (7) Recommend pardon, amnesty, parole or suspension of sentence of election law violators.
- (8) Deputize law enforcement agencies and instrumentalities of the Government for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.
- (9) Recommend to the President the removal of any officer or employee it has deputized for violation or disregard of, or disobedience to its directive.
- (10) Registration of political parties, organizations and coalitions and accreditation of citizens' arms.
- (11) Regulation of public utilities and media of information. *The law limits the right of free speech and of access to mass media of the candidates themselves.* The limitation however, bears a clear and reasonable connection with the objective set out in the Constitution. For it is precisely in the unlimited purchase of print space and radio and television time that the resources of the financially affluent candidates are likely to make a crucial difference. *The purpose is to ensure "equal opportunity, time, and space, and the right to reply,"* as well as uniform and reasonable rates of charges for the use of such media facilities, in connection with "public information campaigns and forums among candidates." [*National Press Club v. Comelec* (1992)]

Note: This power may be exercised only over the media, not over practitioners of media. Thus, a COMELEC resolution prohibiting radio and TV commentators and newspaper columnists from commenting on the issues involved in the forthcoming plebiscite for the ratification of the organic law establishing the CAR was held invalid. [*Sanidad v. COMELEC*, 181 SCRA 529]

- (12) Decide election cases

The Commission on Elections may sit *en banc* or *in two divisions*, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that *motions for reconsideration of decisions shall be decided by the Commission en banc*. [Art. IX—C, Sec. 3]

Cases which must be heard by division

- (1) **All election cases**, including pre-proclamation contests originally cognizable by the Commission in the exercise of its powers under Sec. 2(2), Art IX-C.
- (2) Jurisdiction over a **petition to cancel a certificate of candidacy**.
- (3) Even cases appealed from the RTC or MTC have to be heard and decided in division before they may be heard *en banc*.

If the COMELEC exercises its **quasi-judicial functions** then the case must be heard through a division. Upon motion for reconsideration of a decision, the case is heard *en banc*. [*Manzala v. COMELEC* (2007)]

If the COMELEC exercises its **administrative functions** then it must act *en banc*. [*Bautista v. COMELEC*, 414 SCRA 299 (2003)]

Composition: A Chairman and 6 Commissioners.

Qualifications:

- (1) Must be natural-born citizens;
- (2) At least 35 years of age;
- (3) Holders of a college degree;
- (4) Have not been candidates in the immediately preceding election;
- (5) Majority, including the Chairman, must be members of the Philippine Bar who have been engaged in the practice of law for at least 10 years. [Art. IX-C, Sec. 1]

B.3. COMMISSION ON AUDIT

Powers and Functions

- (1) Examine, audit, and settle accounts pertaining to government funds or property: its revenue, receipts, expenditures, and uses

Post-audit basis:

- (a) Constitutional bodies, commissions and offices;
- (b) Autonomous state colleges and universities;
- (c) GOCCs with **no original charters and their subsidiaries**;
- (d) Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, **which are required by law or the granting institution to submit such audit as a condition of subsidy or equity.**

Complementing the constitutional power of the COA to audit accounts of "non-governmental entities receiving subsidy or equity xxx from or through the government" is Section 14(1), Book V of the Administrative Code, which authorizes the COA to audit accounts of non-governmental entities "required to pay xxx or

have government share" but only with respect to "funds xxx coming from or through the government."

Despite its non-governmental character, the Manila Economic and Cultural Office handles government funds in the form of the "verification fees" it collects on behalf of the DOLE and the "consular fees" it collects under Section 2(6) of EO No. 15, s. 2001. Hence, the accounts of the MECO pertaining to its collection of such "verification fees" and "consular fees" should be audited by the COA. [*Funa v. Manila Economic and Cultural Office*, G.R. No. 193462 (2014)]

COA does not have the exclusive power to examine and audit government agencies. The framers of the Constitution were fully aware of the need to **allow independent private audit of certain government agencies in addition to the COA audit** [DBP v. COA, G.R. No. 88435 (2002)]

- (2) Exclusive Authority to
 - (a) Define the scope of its audit and examination;
 - (b) Establish techniques and methods required ;
 - (c) Promulgate accounting and auditing rules and regulations.

The Constitution grants the COA the exclusive authority to define the scope of its audit and examination, and establish the techniques and methods therefor. This includes giving the COA Assistant Commissioner and General Counsel the authority to deputize a special audit team. [*The Special Audit Team, Commission on Audit v. Court of Appeals*, G.R. No. 174788 (2013)].

Note: Art. IX-D, Sec. 3. No law shall be passed exempting any entity of the Government or its subsidiaries in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

Composition: A Chairman and 2 Commissioners

Qualifications:

- (1) Natural born Filipino citizens
- (2) At least 35 years of age
- (3) CPAs with not less than 10 years of auditing experience OR members of the Philippine bar with at least 10 years practice of law

Note: At no time shall all members belong to the same profession.

C. PROHIBITED OFFICES AND INTERESTS

No member of the Constitutional Commissions shall, during their tenure:

- (1) **Hold any other office or employment.** This is similar to the prohibition against executive officers. It applies to both public and private offices and employment.
- (2) Engage in the **practice of any profession.**
- (3) Engage in the **active management or control of any business which in any way may be affected** by the functions of his office.
- (4) Be **financially interested**, directly or indirectly, in any contract with, or in any franchise or privilege granted by, the Government, its subdivisions, agencies or instrumentalities, including GOCCs or their subsidiaries. [*Art. IX-A, Sec. 2*]

The CSC Chairman cannot be a member of a government entity that is under the control of the President without impairing the independence vested in the CSC by the 1987 Constitution [*Funa v. Civil Service Commission*, G.R. No. 191672 (2014)].

D. JURISDICTION

D.1. CIVIL SERVICE COMMISSION

The CSC has been granted by the Constitution and the Administrative Code jurisdiction over all civil service positions in the government service, whether career or non-career. The specific jurisdiction, as spelled out in the *CSC Revised Uniform Rules on Administrative Cases in the Civil Service*, did not depart from the general jurisdiction granted to it by law. [*Civil Service Commission v. Sojor*, 554 SCRA 160 (2008); see *CSC Resolution No. 991936 detailing the disciplinary and non-disciplinary jurisdiction*]

The Board of Regents (BOR) of a state university has the sole power of administration over the university. But although the BOR of NORSU is given the specific power under its charter to discipline its employees and officials, there is no showing that such power is exclusive. The CSC has concurrent jurisdiction over a president of a state university. [*CSC v. Sojor, supra*]

Appellate Jurisdiction

The appellate power of the CSC will only apply when the subject of the administrative cases filed against erring employees is in connection with the **duties and functions of their office**, and not in cases where the acts of complainant arose from cheating in the civil service examinations. [*Cruz v. CSC*, 370 SCRA 650 (2001)]

D.2. COMMISSION ON ELECTIONS

The Constitution vested upon the COMELEC judicial powers to decide **all contests relating to elective local officials** as therein provided. [*Garcia v. De Jesus*, 206 SCRA 779 (1992)]

Exclusive: All contests relating to the elections, returns and qualifications of all **elective regional, provincial, and city officials**.

Jurisdiction over intra-party disputes: The COMELEC has jurisdiction over cases pertaining to party leadership and the nomination of party-list representatives. The COMELEC's powers and functions under the Constitution, "include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts." The power to register political parties necessarily involves the determination of the persons who must act on its behalf. Thus, the COMELEC may resolve an intra-party leadership dispute, in a proper case brought before it, as an incident of its power to register political parties. [*Lokin v. COMELEC* (2012)]

Appellate: All contests involving *elected municipal officials* decided by trial courts of general jurisdiction, or involving elective barangay officials decided by a court of limited jurisdiction. [*Garcia, supra*]

Jurisdiction to issue writs of certiorari: The COMELEC may issue a writ of certiorari in aid of its appellate jurisdiction. Interpreting the phrase "in aid of its appellate jurisdiction," if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction. [*Bulilis v. Nuez* (2011)]

D.3. COMMISSION ON AUDIT

Art. IX-D, Sec. 1. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters, and on a *post-audit* basis:

- (a) *Constitutional bodies*, commissions and officers that have been *granted fiscal autonomy* under the Constitution;

LGUs, though granted local fiscal autonomy, are still within the audit jurisdiction of the COA. [*Veloso v. COA* (2011)]

- (b) *Autonomous state colleges and universities*;

- (c) Other *government-owned or controlled corporations and their subsidiaries*; and

The Boy Scouts of the Philippines (BSP) is a *public corporation* and its funds are subject to the COA's audit jurisdiction. (*Boy Scouts of the Philippines v. COA*, 651 SCRA 146 [2011])

- (d) Such *non-governmental entities* receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. [*Phil. Society for the Prevention of Cruelty to Animals v. COA*, G.R. 169752, Sept. 25, 2007]

The Constitution formally embodies the long established rule that private entities who handle government funds or subsidies in trust may be examined or audited in their handling of said funds by government auditors. [*Blue Bar Coconut Philippines, Inc. v. Tantuico* (1988)]

Primary Jurisdiction over Money Claims

Limited to liquidated claims: The COA has primary jurisdiction to pass upon a private entity's money claims against a provincial gov't. However, the scope of the COA's authority to take cognizance of claims is circumscribed by cases holding statutes of similar import to mean only liquidated claims, or those determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers. [*Euro-Med Laboratories, Phil. Inc. v. Province of Batangas* (2006)]

No jurisdiction over their validity or constitutionality: The jurisdiction of the COA over money claims against the government does not include the power to rule on the constitutionality or validity of laws. [*Parreño v COA* (2007)]

E. REVIEW OF FINAL ORDERS, RESOLUTIONS, AND DECISIONS

E.1. RENDERED IN EXERCISE OF QUASI-JUDICIAL FUNCTIONS

Art. IX-A, Sec. 7. Each Commission shall decide **by a majority vote of all its Members**, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission **may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days** from receipt of a copy thereof.

Decisions

Each Commission shall decide by a majority vote of *all its members (NOT only those who participated in the deliberations)* any case or matter brought before it within 60 days from the date of its submission for decision or resolution. [Art. IX-A, Sec. 7]

Any decision, order or ruling of each Commission may be brought to the SC on certiorari by the aggrieved party within 30 days from receipt of the copy thereof.

In resolving cases brought before it on appeal, respondent COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. Such would render COA's vital constitutional power unduly limited and thereby useless and ineffective. [*Yap v COA* [2010]]

Certiorari jurisdiction of the Supreme Court:

Limited to decisions rendered in actions or proceedings taken cognizance of by the Commissions in the exercise of their **quasi-judicial powers**.

The Court exercises extraordinary jurisdiction, thus, the proceeding is limited only to issues involving grave abuse of discretion resulting in lack or excess of jurisdiction, and does not ordinarily empower the Court to review the factual findings of the Commission. [*Aratuc v. COMELEC*, (1999)]

Synthesis on the Rules of Modes of Review

- (1) Decisions, order or ruling of the Commissions in the exercise of their **quasi-judicial functions** may be reviewed by the Supreme Court.
- (2) The mode of review is a **petition for certiorari under Rule 64** (not Rule 65).
- (3) *Exception:* The Rules of Civil Procedure, however, provides for a different legal route in the case of the **Civil Service Commission**. In the case of CSC, **Rule 43** will be applied, and the case will be brought to the Court of Appeals.

E.2. RENDERED IN THE EXERCISE OF ADMINISTRATIVE FUNCTIONS

Each Commission shall *appoint its own officials* in accordance with law [Art. IX-A, Sec. 4]

Each Commission *En Banc* may *promulgate its own rules concerning pleadings and practices* before it [Art. IX-A, Sec. 6]

But these rules shall not diminish, increase or modify substantive rights

Each Commission shall perform such *other functions as may be provided by law* [Art. IX-A, Sec. 8]

VII. Citizenship

A. WHO ARE FILIPINO CITIZENS

Who are citizens? [*Const., Art. IV, Sec. 1*]

- (a) Citizens of the Philippines **at the time of the adoption** of this Constitution;
- (b) Those whose **fathers OR mothers** are citizens of the Philippines;
- (c) Those who *elected* to be citizens. This is available only to:
 - (1) those born before **Jan 17, 1973**;
 - (2) to Filipino **mothers**; AND
 - (3) elect Philippine citizenship upon reaching the age of majority
- (d) Those naturalized in accordance with law.

Art. IV, Section 1 (3), Constitution is also applicable to those who are born to Filipino mothers and elected Philippine citizenship before February 2, 1987. This is to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen, while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. [*Co v. House Electoral Tribunal (1991)*]

Q: Who were the citizens of the Philippines at the time of the adoption of the 1987 Constitution?

A: Citizens under the 1973 Constitution

- (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;
- (2) Those whose fathers or mothers are citizens of the Philippines;
- (3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of 1935; and
- (4) Those who are naturalized in accordance with law. [*Const. (1973), Art. III, Sec.1(1)*]

Citizens under the 1935 Constitution

- (1) Those who are citizens at the time of the adoption of this Constitution;
- (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands;
- (3) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship;
- (4) Those who are naturalized in accordance with law. [*Art. IV, Sec. 1*]

The following persons were **citizens of the Philippines on May 14, 1935 – the date of the adoption of the 1935 Constitution**:

- (1) Persons born in the Philippine Islands who resided therein on April 11, 1899 and were Spanish subjects on that date, unless they had lost their Philippine citizenship on or before May 14, 1935.
- (2) Natives of the Spanish Peninsula who resided in the Philippines on April 11, 1899, and who did not declare their intention of preserving their Spanish nationality between that date and October 11, 1900, **unless they had lost their Philippine citizenship on or before May 14, 1935.**
- (3) Naturalized citizens of Spain who resided in the Philippines on April 11, 1899, and did not declare their intention to preserve their Spanish nationality within the prescribed period (up to October 11, 1900).
- (4) Children born of (1), (2) and (3) subsequent to April 11, 1899, **unless they lost their Philippine citizenship on or before May 14, 1935.**
- (5) Persons who became naturalized citizens of the Philippines in accordance with naturalization law since its enactment on March 26, 1920.

Q: Are foundlings natural-born citizens?

A: Yes. As a matter of law, foundlings are as a class, natural-born citizens. While the 1935 Constitution's enumeration is silent as to foundlings, there is no restrictive language which would definitely exclude foundlings either. No such intent or language permits discrimination against foundlings. On the contrary, all three Constitutions (1935, 1973, 1987) guarantee the basic right to equal protection of the laws. All exhort the State to render social justice. [*Poe-Llamanzares v. COMELEC*, G.R. No. 221697 (2016)] (N.B. Outside of the bar coverage)

B. MODES OF ACQUIRING CITIZENSHIP

Generally, two modes of acquiring citizenship:

(1) By Birth

- (a) *Jus Soli* - "right of soil;" person's nationality is based on place of birth; formerly effective in the Philippines, see *Roa v. Collector of Customs* (1912)
- (b) *Jus Sanguinis* - "right of blood;" person's nationality follows that of his natural parents. **The Philippines currently adheres to this principle.**

(2) By Naturalization**C. NATURALIZATION****C.1. NATURALIZATION**

Process by which a foreigner is adopted by the country and clothed with the privileges of a native-born citizen.

Qualifications [C.A. 473, Sec. 2]

- (1) Not less than twenty-one years of age on the day of the hearing of the petition;
- (2) Resided in the Philippines for a continuous period of 10 years or more;
- (3) Of good moral character; believes in the principles underlying the Philippine Constitution; conducted himself in a proper and irreproachable manner during the entire period of his residence towards the government and community
- (4) Must own real estate in the Philippines worth P5,000 or more OR must have lucrative trade, profession, or lawful occupation;
- (5) Able to speak or write English or Spanish or anyone of the principal languages;
- (6) Enrolled his minor children of school age in any of the recognized schools where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him;

Special Qualifications [C.A. 473, Sec. 3] – ANY will result to reduction of 10-year period to 5 years

- (1) Having honorably held office under the Government of the Philippines or under that of any of the provinces, cities, municipalities, or political subdivisions thereof;
- (2) Established a new industry or introduced a useful invention in the Philippines;
- (3) Married to a Filipino woman;
- (4) Engaged as a teacher in the Philippines in a public or recognized private school not established for the exclusive instruction of children of persons of a particular nationality or race, in any of the branches of education or industry for a period of 2 years or more;
- (5) Born in the Philippines.

Disqualifications [C.A. 473, Sec. 4]

- (1) Persons opposed to organized government or affiliated with groups who uphold and teach doctrines opposing all organized governments;
- (2) Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success of their ideas;
- (3) Polygamists or believers in polygamy;
- (4) Persons convicted of crimes involving moral turpitude;
- (5) Persons suffering from mental alienation or incurable contagious diseases;
- (6) Persons who during the period of their stay, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;
- (7) Citizens or subjects of nations with whom the Philippines is at war
- (8) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subject thereof;

Burden of Proof

The applicant must comply with the jurisdictional requirements, establish his or her possession of the qualifications and none of the disqualifications enumerated under the law, and present at least two (2) character witnesses to support his allegations. [*Go v. Republic of the Philippines*, G.R. No. 202809 (2014)]

C.2. DENATURALIZATION

Process by which grant of citizenship is revoked.

Grounds [C.A. 473, Sec. 18]– upon the proper motion of the Sol. Gen. or the provincial fiscal, naturalization may be cancelled when

- (1) Naturalization certificate was fraudulently or illegally obtained [*See Po Soon Tek v. Republic*, 60 SCRA 98 (1974)]
- (2) If, within the five years next following the issuance, he shall return to his native country or to some foreign country and establish his permanent residence there
- (3) Remaining for more than one year in his native country or the country of his former nationality, or two years in any other foreign country, shall be considered as *prima facie* evidence of his intention of taking up his permanent residence in the same;
- (4) Petition was made on an invalid declaration of intention;
- (5) Minor children of the person naturalized failed to graduate from the schools mentioned in sec. 2, *through the fault of their parents*, either by neglecting to support them or by transferring them to another school or schools.
- (6) If he has allowed himself to be used as a dummy in violation of the Constitutional or legal provision requiring Philippine citizenship as a requisite for the exercise, use or enjoyment of a right, franchise or privilege.

Naturalization is never final and may be revoked if one commits acts of moral turpitude. [*Republic v. Guy* (1982)]

Judgment directing the issuance of a certificate of naturalization is a mere grant of a political privilege and that **neither estoppel nor res judicata may be invoked** to bar the State from initiating an action for the cancellation or nullification of the certificate of naturalization thus issued. [*Yao Mun Tek v. Republic* (1971)]

D. DUAL CITIZENSHIP AND DUAL ALLEGIANCE**D.1. DUAL CITIZENSHIP**

Allows a person who acquires foreign citizenship to simultaneously enjoy the rights he previously held as a Filipino citizen.

D.2. DUAL ALLEGIANCE

- (1) **Aliens** who are naturalized as Filipinos but remain loyal to their country of origin;
- (2) **Public officers** who, while serving the government, seek citizenship in another country.

“Dual citizens” are disqualified from running for any elective local position. [Local Government Code, Sec. 40(d)]; this should be read as referring to “dual allegiance”

Once a candidate files his candidacy, he is deemed to have renounced his foreign citizenship in case of dual citizenship. [Mercado v. Manzano (1999)]

Clearly, in including sec. 5 in Article IV on citizenship, the concern of the Constitutional Commission was not with dual citizens per se but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization. Hence, the phrase “dual citizenship” in R.A. No. 7160, sec. 40(d) and in R.A. No. 7854, sec. 20 must be understood as referring to “dual allegiance.”

Consequently, **persons with mere dual citizenship do not fall under this disqualification.** For candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states.

E. LOSS AND RE-ACQUISITION

E.1. GROUNDS [NEO-MADD]

- (1) **Naturalization** in a foreign country [C.A. 63, sec.1(1)];
- (2) **Express renunciation** or **expatriation** [Sec.1(2), CA 63];
- (3) Taking an **oath** of allegiance to another country upon reaching the age of majority;

- (4) **Marriage** by a Filipino woman to an alien, if by the laws of her husband’s country, she becomes a citizen thereof.
- (5) **Accepting** a commission and serving in the armed forces of another country, unless there is an offensive/ defensive pact with the country, or it maintains armed forces in RP with RP’s consent;
- (6) **Denaturalization**;
- (7) Being found by final judgment to be a **deserter** of the AFP;

General Rule: Expatriation is a constitutional right. No one can be compelled to remain a Filipino if he does not want to. [Go Gullian v. Government]

Exception: A Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country. [C.A. 63, sec. 1(3)]

Loss of Philippine citizenship cannot be presumed. Considering the fact that admittedly, Osmeña was both a Filipino and an American, the mere fact that he has a certificate stating that he is an American does not mean that he is not still a Filipino, since there has been NO EXPRESS renunciation of his Philippine citizenship. [Aznar v. COMELEC (1995)]

E.2. REACQUISITION [NRL]

- (1) **Naturalization** [C.A. 63 and C.A. 473]

Now an abbreviated process, no need to wait for 3 years (1 year for declaration of intent, and 2 years for the judgment to become executory)

Requirements: [21/6 GD]

- (a) be 21 years of age
- (b) be a resident for 6 months
- (c) have good moral character
- (d) have no disqualification

- (2) **Repatriation**

Repatriation results in the recovery of the original nationality. Therefore, if he is a natural-born citizen before he lost his citizenship, he will be restored to his

former status as a natural-born Filipino. [*Bengson III v. HRET (2001)*]

Mere filing of certificate of candidacy is not a sufficient act of repatriation. *Repatriation requires an express and equivocal act.* [*Frialdo v. COMELEC (1989)*]

In the absence of any official action or approval by proper authorities, a *mere application* for repatriation *does not, and cannot, amount to an automatic reacquisition* of the applicant's Philippine citizenship. [*Labo v. COMELEC (1989)*]

(3) Legislative Act

Both a mode of acquiring and reacquiring citizenship

RA 9225 (citizenship retention and re-acquisition act of 2003)

Sec. 3. Retention of Philippine Citizenship. — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic: xxx

Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

Sec. 4 Derivative Citizenship. — The unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who re-acquire Philippine citizenship upon effectivity of this Act shall be deemed citizens of the Philippines.

Sec. 5. Civil and Political Rights and Liabilities. — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

- (1) Those intending to exercise their right of suffrage must meet the requirements under Sec. 1, Art. V of the Constitution, RA 9189, otherwise known as "The Overseas

Absentee Voting Act of 2003" and other existing laws;

- (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;
- (3) Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: provided, that they renounce their oath of allegiance to the country where they took that oath;
- (4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and
- (5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:
 - (a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or
 - (b) are in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens.

F. NATURAL-BORN CITIZENS AND PUBLIC OFFICE

F.1 NATURAL-BORN CITIZENS

- (1) Citizens of the Philippines from birth **without having to perform any act** to acquire or perfect their Philippine citizenship; and
- (2) Those **who elect Philippine citizenship** in accordance with [Art. IV, Sec. 1(3)]

The term "natural-born citizens," is defined to include "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship." [*Tecson v. COMELEC* (2004)]

A person who renounces all foreign citizenship under Sec. 5(2) of RA 9225 recants this renunciation by using his foreign passport afterwards [*Maquiling v. COMELEC*, G.R. No. 195649 (2013)].

The Constitutional provision (i.e. "whose fathers are citizens") does not distinguish between "legitimate" or "illegitimate" paternity. Civil Code provisions on illegitimacy govern private and personal relations, not one's political status. [*Tecson v. COMELEC, supra, on the petition for disqualification against presidential candidate FPJ*]

F.2. WHO MUST BE NATURAL-BORN?

- (1) President [Art. VII, Sec. 2]
- (2) Vice-President [Art. VII, Sec. 3]
- (3) Members of Congress [Sec. 3 and 6, Art. VI]
- (4) Justices of SC and lower collegiate courts [Sec. 7(1), Art. VIII]
- (5) Ombudsman and his deputies [Sec. 8, Art. XI]
- (6) Members of Constitutional Commissions
- (7) CSC [Art. IX-B, Sec. 1(1)]
- (8) COMELEC [Art. IX-C, Sec. 1]
- (9) COA [Art. IX-D, Sec. 1(1)]
- (10) Members of the central monetary authority [Art. XII, Sec. 20]
- (11) Members of the Commission on Human Rights [Art. XIII, Sec. 17(2)]

VIII. National Economy and Patrimony

Goals

- (1) More equitable distribution of opportunities, income and wealth
- (2) Sustained increase in amount of goods and services produced by the nation for the benefit of the people
- (3) Expanding production as the key to raising the quality of life for all, especially the underprivileged.

A. REGALIAN DOCTRINE

Art. XII, Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.

The **classification of public lands** is an exclusive prerogative of the Executive Department through the Office of the President. [*Republic v. Register of Deeds of Quezon (1994)*]

A.1. DOCTRINE OF NATIVE TITLE

Ownership over native land is already vested on natives even if they do not have formal titles [*Cariño v. Insular Government, 212 U.S. 449 (1909)*]

B. NATIONALIST AND CITIZENSHIP REQUIREMENT PROVISIONS

<i>Filipino Citizens, or 100% Filipino Corporations</i>	<i>Filipino Citizens, or 60-40 Filipino Corporations</i>	<i>Filipino Citizens, or 70-30 Filipino Corporations</i>
<p>(a) Use and enjoyment of marine wealth, exclusive to Filipino citizens [Art. XII, Sec. 2, par. 2]</p> <ul style="list-style-type: none"> Rules on agricultural lands <p>(Art. XII, Sec. 3)</p> <p>(1) Citizens may lease only ≤ 500 ha.</p> <p>(2) Citizens <u>may</u> acquire by purchase, homestead or grant only ≤ 12 ha.</p> <p>(b) Practice of professions, <i>save in cases provided by law</i> [Art. XII, Sec. 14(2)]</p> <p>(c) Small-scale utilization of natural resources, <i>as may be provided by law</i> [Art. XII, Sec. 2(3)]</p>	<p>(a) Co-production, Joint venture, and Production sharing agreements over natural resources</p> <p>[Art. XII, Sec. 2(1)]</p> <ul style="list-style-type: none"> Agreements shall not exceed a period of 25 years renewable for another 25 years. <p>(b) Educational Institutions [Art. XIV, Sec. 4(2)]</p> <p>Congress may <i>increase</i> Filipino equity participation.</p> <p>(c) Areas of Investment as Congress may prescribe (Congress may prescribe a higher percentage)</p> <p>[Art. XII, Sec. 10]</p> <p>(d) Operation of public utilities [Art. XII, Sec. 11]</p> <ul style="list-style-type: none"> Cannot be for longer period than 50 years Executive and managing officers must be Filipino 	<p>Engagement in advertising Industry</p> <p>[Art. XVI, Sec. 11]</p>

N.B. The Const. holds that private corporations or associations may not hold alienable lands of the public domain except by lease, for a period not exceeding 25 years, renewable for not more than 25 years, and not to exceed 1000 ha. in area, [Art. XII, Sec. 3] but the Const. does not specify the capital requirements for such corporations.

A **public utility** is a business or service engaged in regularly supplying the public with some commodity or service of public consequence. A joint venture falls within the purview of an “association” pursuant to Sec. 11, Art. XII and must comply with the 60%-40% Filipino-foreign capitalization requirement. [*JG Summit Holdings v. CA* (2001)]

What “**capital**” is covered- the 60% requirement applies to both the **voting control and the beneficial ownership** of the public utility. Therefore, it *shall apply uniformly, separately, and across the board to all classes of shares, regardless of nomenclature or category*, comprising the capital of the corporation. (e.g. 60% of common stock, 60% of preferred voting stock, and 60% of preferred non-voting stock.) [*Gamboa v. Teves, G.R. No. 176579, October 9, 2012*]

Interpretation in line with Constitution’s intent to ensure a “self-reliant and independent national economy **effectively-controlled** by Filipinos.” (See *Gamboa v. Teves, supra, June 28, 2011*)

In the original decision, only the *voting stocks* were subject to the 60% requirement. [*Id.*]

There is some controversy in the interpretation of the resolution on the motion for reconsideration. (a) There is the question of whether the **grandfather rule** should be applied. (b) The dispositive merely denied the MRs, but did not reiterate the newer interpretation.

In any case, the released SEC guidelines comply with the strictest interpretation of *Gamboa v. Teves*.

B.1. FILIPINO FIRST

Art. XII, Sec. 10. In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

The term “patrimony” **pertains to heritage**, and given the history of the Manila Hotel, it has become a part of our national economy and patrimony. Thus, the **Filipino First policy** provision of the Constitution is applicable. Such provision is *per se* enforceable, and requires no further guidelines or implementing rules or laws for its operation. [*Manila Prince Hotel v. GSIS, (1990)*]

The Constitution does not impose a policy of Filipino monopoly of the economic environment. It does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services. [*Tañada v. Angara (1997)*]

Art. XII, Sec. 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

C. EXPLORATION, DEVELOPMENT, AND UTILIZATION OF NATURAL RESOURCES

Art. XII, Sec. 2, par. 4. The President may enter into agreements with foreign-owned corporations *involving either technical or financial assistance* for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The State, being the owner of the natural resources, is accorded the primary power and responsibility in the exploration, development and utilization thereof. As such it may undertake these activities through four modes:

- (1) The State may **directly undertake** such activities;
- (2) The State may enter into **co-production, joint venture or production-sharing** agreements with Filipino citizens or qualified corporations;
- (3) Congress may, **by law**, allow small-scale utilization of natural resources by Filipino citizens; or
- (4) For the large-scale exploration, development and utilization of minerals, petroleum and other mineral oils, the **President may enter into agreements with foreign-owned corporations involving technical or financial assistance.** [*La Bugal-B'Laan Tribal Assn. v. Ramos* (Jan. 2004)]

FTAA (1987 Const.)	SERVICE CONTRACT (1973 Const.)
Parties	
Only the President (in behalf of the State), and only with corporations	A Filipino citizen, corporation or association with a "foreign person or entity"
Size of Activities	
Only large-scale exploration, development and utilization	Contractor provides all necessary services and technology and the requisite financing, performs the exploration work obligations, and assumes all exploration risks
Natural Resources Covered	
Minerals, petroleum and other mineral oils	Virtually the entire range of the country's natural resources
Scope of Agreements	
Involving either financial or technical assistance	Contractor provides financial or technical resources, undertakes the exploitation or production of a given resource, or directly manages the productive enterprise, operations of the exploration and exploitation of the resources or the disposition of marketing or resources

Service Contracts not prohibited.

Even supposing FTAA's are service contracts, the latter are not prohibited under the Constitution. [Justification: A *verba legis* interpretation does not support an intended prohibition. The members of the CONCOM used the terms "service contracts" and "financial and technical assistance" interchangeably.] [*La Bugal-B'laan Tribal Assn. v. Ramos*, (Dec. 2004)]

The following are valid:

- (1) Financial and Technical Assistance Agreements (FTAA)– not a prohibited agreement in the contemplation of the Constitution
- (2) Philippine Mining Law (RA 7942)
- (3) Its Implementing Rules and Regulations, insofar as they relate to financial and technical agreements [*La Bugal-B'laan Tribal Assn. v. Ramos* (Dec. 2004)]

The Constitution should be construed to grant the President and Congress sufficient discretion and reasonable leeway to enable them to **attract foreign investments and expertise**, as well as to secure for our people and our posterity the blessings of prosperity and peace.

It is not unconstitutional to allow a wide degree of **discretion to the Chief Executive**, given the nature and complexity of such agreements, the humongous amounts of capital and financing required for large-scale mining operations, the complicated technology needed, and the intricacies of international trade, coupled with the State's need to maintain flexibility in its dealings, in order to preserve and enhance our country's competitiveness in world markets. [*La Bugal-B'laan Tribal Assn. v. Ramos*]

Requisites for a valid service contract under the Constitution

- (1) A general law that will set standard or uniform terms, conditions and requirements
- (2) The President shall be the signatory for the government
- (3) Within thirty days of the executed agreement, the President shall report it to Congress [*La Bugal-B'laan Tribal Assn. v. Ramos*, G.R. No. 127882 (2004)]

D. FRANCHISES, AUTHORITY AND CERTIFICATES FOR PUBLIC UTILITIES

Franchise, certificate or any other form of authorization for the operation of public utilities – ONLY to citizens of the Philippines, or corporations at least 60% of whose capital is Filipino-owned. [Art. VII, Sec. 11]

D.1. NATURE OF A FRANCHISE

- (1) It is a *privilege* not a right
- (2) Shall NOT be exclusive;
- (3) Shall NOT be for a period of more than 50 years;
- (4) Shall be subject to amendment, alteration or repeal by Congress. [*Id.*]

Jurisprudence:

- (1) Congress does not have the exclusive power to issue franchises. Administrative bodies (i.e. LTFRB, Energy Regulatory Board) may be empowered by law to do so. [*Albano v. Reyes*, 175 SCRA 264]
- (2) What constitutes a public utility is not the ownership but the *use* to the public. The Constitution requires a franchise for the operation of public utilities. However, it does not require a franchise before one can own the facilities needed to operate a public utility so long as it does not operate them to serve the public. [*Tatad v. Garcia*] E.g. X Company may *own* an airline without the need of a franchise. But in *operating* an air transport business, franchise is required.

E. ACQUISITION, OWNERSHIP, AND TRANSFER OF PUBLIC AND PRIVATE LANDS

Lands of the Public Domain are classified into:

- (1) Agricultural Lands
- (2) Forest or Timber Lands
- (3) Mineral Lands
- (4) National Park [Art. XII, Sec. 3]

Note: The classification of public lands is a function of the executive branch, specifically the Director of the Land Management Bureau (formerly Director of Lands). The decision of the Director, when approved by the Secretary of the DENR, as to questions of fact, is conclusive upon the courts. [*Republic v. Imperial*, G.R. No. 130906, February 11, 1999].

Alienable lands of the public domain shall be limited to *agricultural lands*. [Art. XII, Sec. 3]

To prove that the land subject of an application for registration is alienable, an applicant must conclusively establish the existence of a *positive act* of the government such as a presidential proclamation or an executive order or a legislative act or statute. [*Republic v. Candymaker, Inc.* G.R. No. 163766, June 22, 2006]

Foreshore land is that part of the land which is between the high and low water, and left dry by the flux and reflux of the tides. It is part of the alienable land of the public domain and may be disposed of only by lease and not otherwise. [*Republic v. Imperial, supra*]

Private corporations or associations may not hold such alienable lands of public domain except by lease, for a period not exceeding 25 years, and not to exceed 1000 hectares in area.

Citizens of the Philippines may lease not more than 500 ha., or acquire not more than 12 hectares thereof by purchase, homestead, or grant. [Art. XII, Sec. 3]

Private lands

General Rule: No private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain. [Art. XII, Sec. 7]

Exceptions:

- (1) Hereditary succession (art. XII, sec. 7)
- (2) A natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law. (art. XII, sec. 8)

Consequence of sale to non-citizens:

Any sale or transfer in violation of the prohibition is null and void. (*Ong Ching Po. V. CA*) When a disqualified foreigner later sells it to a qualified owner (e.g. Filipino citizen), the **defect is cured. The qualified buyer owns the land.** (*See Halili v. CA*, G.R. No. 113538, March 12, 1998)

Q: Can a former owner file an action to recover the property?

A: Yes. The Court in *Philippine Banking Corp. v. Lui She* [21 SCRA 52] abandoned the application of the principle of in pari delicto. Thus, the action will lie.

HOWEVER, land sold to an alien which was later transferred to a Filipino citizen OR when the alien later becomes a Filipino citizen can no longer be recovered by the vendor, because there is no longer any public policy involved. [*Republic v. IAC*, 175 SCRA 398]

Foreigners are allowed to own condominium units and shares in condominium corporations up to not more than 40% of the total and outstanding capital stock of a Filipino-owned or controlled corporation. Under this set up, the ownership of the land is legally separated from the unit itself. The land is owned by a Condominium Corporation and the unit owner is simply a member in this Condominium Corporation. As long as 60% of the members of this Condominium Corporation are Filipinos, the remaining members can be foreigners. [*Hulst v. PR Builders* (2008)]

F. PRACTICE OF PROFESSIONS

Art. XII, Sec. 14 The practice of all profession in the Philippines shall be limited to Filipino citizens, save in the case prescribed by law.

Like the legal profession, the practice of medicine is not a right but a privilege burdened with conditions as it directly involves the very lives of the people. A fortiori, this power includes the power of Congress to prescribe the qualifications for the practice of professions or trades which affect the public welfare, the public health, the public morals, and the public safety; and to regulate or control such professions or trades, even to the point of revoking such right altogether. [*Imbong v. Ochoa, supra*]

G. ORGANIZATION AND REGULATION OF CORPORATIONS, PRIVATE AND PUBLIC (STEWARDSHIP CONCEPT)

Art. XII, Sec. 6. The use of property bears a social function, and all economic agents shall contribute to the common good.

Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

Art. XIII, Sec. 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

H. MONOPOLIES, RESTRAINT OF TRADE AND UNFAIR COMPETITION

H.1. MONOPOLIES

The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed. [*Art. XII, Sec. 19*]

Although the Constitution enshrines free enterprise as a policy, it nevertheless reserves to the Government the power to intervene whenever necessary for the promotion of the general welfare. [*Philippine Coconut Dessicators v. PCA (1998)*]

Monopolies are not per se prohibited by the Constitution but may be permitted to exist to aid the government in carrying on an enterprise or to aid in the performance of various services and functions **in the interest of the public**. Nonetheless, a determination must first be made as to whether public interest requires a monopoly. As monopolies are subject to abuses that can inflict severe prejudice to the public, they are subject to a higher level of State regulation than an ordinary business undertaking. [*Agan, Jr. v. PIATCO (2003)*]

An "exclusivity clause" in contracts is allowed. An "exclusivity clause" is defined as agreements which prohibit the obligor from engaging in "business" in competition with the obligee. Contracts requiring exclusivity are not per se void. Each contract must be viewed vis-à-vis all the circumstances surrounding such agreement in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition. Restrictions upon trade may be upheld when not contrary to public welfare and not greater than is necessary to afford a fair and reasonable protection to the party in whose favor it is imposed. [*Avon v. Luna (2006)*]

H.2. CENTRAL MONETARY AUTHORITY

[Art. XII, Sec. 20]

Functions:

- (1) Provide policy directions in the areas of **money, banking, and credit**;
- (2) Supervise the operations of banks;
- (3) Exercise such **regulatory powers** as may be provided by law over the **operations of finance companies** and other institutions performing similar functions

Qualifications of the Governors:

- (1) Natural-born Filipino;
- (2) Known probity, integrity and patriotism;
- (3) Majority shall come from the private sector

Subject to such other qualifications and disabilities as may be provided by law

Until the Congress otherwise provides, the Central Bank of the Philippines operating under existing laws, shall function as the central monetary authority. **Currently, the central monetary authority is the Bangko Sentral ng Pilipinas.**

IX. Social Justice and Human Rights

A. CONCEPT OF SOCIAL JUSTICE

Art. II, Sec. 10. The State shall promote social justice in all phases of national development.

Art. XIII, Sec. 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Art. XIII, Sec. 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the **humanization of laws and the equalization of social and economic forces** by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the **promotion of the welfare of all the people**, the adoption by the Government of measures calculated to insure **economic stability of all the competent elements of society**, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and

economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about "the greatest good to the greatest number." [*Calalang v. Williams*, G.R. 47800, December 2, 1940]

Social Justice, as the term suggests, should be used only to correct an injustice. *Magkalas* cannot take solace in this provision, considering that the NHA's order of relocating petitioner to her assigned lot and demolishing her property on account of her refusal to vacate was consistent with the Urban Development and Housing Act's fundamental objective of promoting social justice in the manner that will inure to the common good. [*Magkalas v. NHA* (2008)]

B. COMMISSION ON HUMAN RIGHTS

Art. XIII, Sec. 17. There is hereby created an independent office called the Commission on Human Rights.

The Commission shall be composed of a Chairman and four Members who must be natural-born citizens of the Philippines and a majority of whom shall be members of the Bar. The term of office and other qualifications and disabilities of the Members of the Commission shall be provided by law.

Until this Commission is constituted, the existing Presidential Committee on Human Rights shall continue to exercise its present functions and powers.

The approved annual appropriations of the Commission shall be automatically and regularly released.

Powers and functions

- (1) **Investigate**, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- (2) **Adopt its operational guidelines and rules of procedure**, and cite for contempt for violations thereof in accordance with the Rules of Court;
- (3) Provide appropriate legal measures for the **protection of human rights** of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;
- (4) Exercise **visitorial powers** over jails, prisons, or detention facilities;
- (5) Establish a **continuing program of research, education, and information** to enhance respect for the primacy of human rights;
- (6) **Recommend to Congress effective measures** to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
- (7) Monitor the Philippine Government's **compliance with international treaty obligations on human rights**;
- (8) **Grant immunity from prosecution** to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
- (9) **Request the assistance of any department, bureau, office, or agency** in the performance of its functions;
- (10) **Appoint its officers and employees** in accordance with law; and
- (11) **Perform such other duties and functions** as may be provided by law. [*Art. XIII, Sec. 18*]

As should at once be observed, only the first of the enumerated powers and functions bears any resemblance to adjudication or judgment. The Constitution clearly and

categorically grants to the Commission the power to **investigate all forms of human rights violations** involving civil and political rights. But it cannot try and decide cases (or hear and determine causes) as courts of justice, or even quasi-judicial bodies do. To investigate is not to adjudicate or adjudge. Whether in the popular or the technical sense, these terms have well understood and quite distinct meanings. [*Cariño v. CHR*, G.R. No. 96681, December 2, 1991]

X. Education, Science, Technology, Arts, Culture and Sports

A. RIGHT TO EDUCATION

Art. XIV, Sec. 1. The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.

Sec. 2. The State shall:

- (1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society;
- (2) Establish and maintain, a system of free public education in the elementary and high school levels. Without limiting the natural rights of parents to rear their children, elementary education is compulsory for all children of school age;
- (3) Establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged;
- (4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs; and
- (5) Provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency, and other skills.

B. ACADEMIC FREEDOM

Art. XIV, Sec. 5 (2). Academic freedom shall be enjoyed in all institutions of higher learning.

Four essential freedoms of a university:

- (1) Who may teach
- (2) What may be taught
- (3) How it shall teach
- (4) Who may be admitted to study [*Garcia v. Faculty Admission Committee, 68 SCRA 277 (1975) citing J. Frankfurter, concurring in Sweezy v. New Hampshire, 354 US 232 (1937)*]

Institutional academic freedom includes the *right of the school or college to decide for itself, its aims and objectives, and how best to attain them* free from outside coercion or interference save possibly when the overriding public interest calls for some restraint.

The right to discipline the student likewise finds basis in the freedom "what to teach." Indeed, while it is categorically stated under the Education Act of 1982 that students have a right "to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation," such right is subject to the established academic and disciplinary standards laid down by the academic institution. [*DLSU Inc., v. CA, G.R. No. 127980, December 19, 2007*]

Highest budgetary priority to education

The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment. [Art. XIV, Sec. 5 (5)]

Allocation of larger share to debt service vis-à-vis education is not unconstitutional. –The DECS already has the highest budgetary allocation among all department budgets. Congress can exercise its judgment and power to appropriate enough funds to reasonably service debt. Art. XIV, Sec. 5(5) is *directive*. [*Guingona v. Carague (1991)*]

POLITICAL LAW

**CONSTITUTIONAL
LAW 2**

I. Fundamental Powers of the State

A. CONCEPT, APPLICATION AND LIMITS

A.1 POLICE POWER

Definition

It is the inherent and plenary power of the state which enables it to prohibit all that is hurtful to the comfort, safety and welfare of society. [*Ermita-Malate Hotel and Motel Operators Association, Inc. v. Mayor of Manila* (1967)]

Scope and Limitations

General Coverage

"The state, in order to promote the general welfare, may interfere with personal liberty, with property, and with business and occupations. Persons may be subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the state and to this fundamental aim of our Government, the rights of the individual are subordinated." [*Ortigas and Co., Limited Partnership v. Feati Bank and Trust Co.* (1979)]

"Police power, while incapable of an exact definition, has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response as the conditions warrant." [*White Light Corporation v. City of Manila* (2009)]

Police Power cannot be bargained away through treaty or contract. [*Ichong v. Hernandez* (1957)]

Despite the impairment clause, a contract valid at the time of its execution may be legally modified or even completely invalidated by a subsequent law. If the law is a proper exercise of the police power, it will prevail over the contract. [*PNB v. Office of the President* (1996)]

Taxation, Eminent Domain as Implements of Police Power

Taxation may be used as an implement of police power. [*Lutz v. Araneta* (1955)]

Eminent domain may be used as an implement to attain the police objective. [*Association of Small Landowners v. Secretary of Agrarian Reform* (1989)]

Specific Coverage

- (1) Public Health
- (2) Public Morals
- (3) Public Safety
- (4) Public Welfare

Test of Reasonability (Means-Purpose Test)

- (1) Lawful means: The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. [*Planters Products v. Fertiliphil Corp.* (2008)]
- (2) Lawful purpose: The interests of the public, generally, as distinguished from those of a particular class, require such interference;

The limit to police power is reasonability. The Court looks at the test of reasonability to decide whether it encroaches on the right of an individual. So long as legitimate means can reasonably lead to create that end, it is reasonable. [*Morfe v. Mutuc* (1968)]

Legislature's determination "as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the court." [*US v. Toribio* (1910)]

However, courts cannot delimit beforehand the extent or scope of the police power, since they cannot foresee the needs and demands of public interest and welfare. "So it is that Constitutions do not define the scope or extent of the police power of the State; what they do is to set forth the limitations thereof. The most important of these are the due process clause and the equal protection clause." [*Ichong v. Hernandez* (1957)]

The SC upheld the validity of Administrative Orders (issued by the DENR Sec.) which converted existing mine leases and other

mining agreements into production-sharing agreements within one year from effectivity. The subject sought to be governed by the AOs are germane to the object and purpose of E.O. 279 (passed under the Freedom Constitution) and that mining leases or agreements granted by the State are subject to alterations through a reasonable exercise of police power of the State. [*Miners Association of the Philippines v. Factoran* (1995)]

Illustrations on the Exercise of Police Power

General Welfare v Property rights – RA 9257, the *Expanded Senior Citizens Act of 2003*, is a legitimate exercise of police power. *Administrative Order No. 177* issued by the Department of Health, providing that the 20% discount privilege of senior citizens shall not be limited to the purchase of unbranded generic medicine but shall extend to both prescription and non-prescription medicine, whether branded or generic, is valid. [*Carlos Superdrug Corporation v. DSWC et al.* (2007)]

National Security v Property Rights – SC upheld the constitutionality of RA 1180 (*An Act to Regulate the Retail Business*) which sought to nationalize the retail trade business by prohibiting aliens in general from engaging directly or indirectly in the retail trade. The law was to “remedy a real actual threat and danger to national economy posed by alien dominance and control of the retail business; the enactment clearly falls within the scope of the police power of the State, thru which and by which it protects its own personality and insures its security and future.” [*Ichong v. Hernandez* (1957)]

Public Safety – Police power is a dynamic agency, suitably vague and far from being precisely defined; the principle is the Constitution did not intend to enable an individual citizen or a group of citizens to unreasonably obstruct the enactment of measures calculated to communal peace, safety, good order, and welfare. A heavy burden lies in the hands of a petitioner who questions the state’s police power if it was clearly intended to promote public safety. [*Agustin v. Edu*, (1979), on an LOI requiring early warning devices for all motor vehicle owners]

Police Power, Property Rights v Fundamental Rights – Hotel and motel operators’ association assailed the constitutionality of Ordinance No. 4760 (regulating motels through fees, restrictions on minors, open inspection, logbooks, etc.). **Court held:** The mantle of protection associated with the due process guaranty does not cover petitioners. This particular manifestation of a police power measure being specifically aimed to safeguard public morals is immune from such imputation of nullity resting purely on conjecture and unsupported by anything of substance.

Where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measure is wider. [*Ermita-Malate Motel and Motel Operators Assn. v. City Mayor of Manila* (1967)]

However, when legitimate sexual behavior, which is constitutionally protected [by the right to privacy], and other legitimate activities, most of which are grounded on the convenience of having a place to stay during the short intervals between travels [in motels], will be unduly curtailed by the ordinance, the same ordinance is invalid. [*See White Light Corp. v. City of Manila* (2009)]

Limitations when police power is delegated:

- (1) Express grant by law [e.g. Secs. 16, 391, 447, 458 and 468, R.A. 7160, for LGUs]
- (2) Limited within its territorial jurisdiction [for local government units]
- (3) Must not be contrary to law.

A.2 EMINENT DOMAIN

Definition and Scope

The power of eminent domain is the inherent right of the State to condemn private property to public use upon payment of just compensation.

It is well settled that eminent domain is an inherent power of the State that need not be granted even by the fundamental law. *Sec. 9, Art. III* merely imposes a limit on the government's exercise of this power. [*Republic v. Tagle* (1998)]

The repository of eminent domain powers is legislature, i.e. exercised through the enactment of laws. But power may be delegated to LGUs and other government entities (via charter); still, the delegation must be by law. [*Manapat v. CA* (2007)]

Who may exercise the power?

- (1) Congress;
- (2) By delegation, the President and administrative bodies [through the *Admin. Code*], local government units [through the *Loc. Gov. Code*], and even private enterprises performing public services [See *Tenorio v. Manila Railroad* (1912)]

Application

When is there taking in the constitutional case?

- (1) Diminution in value;
- (2) Prevention of ordinary use; and
- (3) Deprivation of beneficial use.
- (4) Regulatory takings

In *Didipio Earth Savers Multipurpose Association (DESAMA) v. Gozun* (2006), examples were (a) trespass without actual eviction; (b) material impairment of the value; (c) prevention of the ordinary uses (e.g. easement).

But anything taken by virtue of police power is not compensable (e.g. abatement of a nuisance), as usually property condemned under police power is noxious [*DESAMA v. Gozun* (2006)]

Examples from Jurisprudence:

- (1) The imposition of an aerial easement of right-of-way was held to be taking. The exercise of the power of eminent domain does not always result in the taking or appropriation of title to the expropriated property; it may also result in the imposition of a burden upon the owner of the condemned property, without loss of title or possession. [*NPC v. Gutierrez* (1991)]
- (2) A municipal ordinance prohibiting a building which would impair the view of the plaza from the highway was likewise considered taking. [*People v. Fajardo* (1958)]
- (3) A regulatory taking occurs where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action. [*Armstrong v. United States*, 364 U.S. 40 (1960)]

When the State exercises the power of eminent domain in the implementation of its agrarian reform program, the constitutional provision which governs is Section 4, Article XIII of the Constitution. Notably, this provision also imposes upon the State the obligation of paying the landowner compensation for the land taken, even if it is for the government's agrarian reform purposes. [*Land Bank of the Philippines v. Honeycomb Farms Corporation* (2012)]

A.3 TAXATION

Definition and Scope

It is the power by which the State raises revenue to defray the necessary expenses of the Government. It is the enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty, for the support of the government and for all public needs.

It is as broad as the purpose for which it is given.

Purpose:

- (1) To raise revenue
- (2) Tool for regulation
- (3) Protection/power to keep alive

Tax for special purpose

Treated as a special fund and paid out for such purpose only; when purpose is fulfilled, the balance, if any shall be transferred to the general funds of the Government. [Sec. 29 (3), Art. VI]

Scope and Limitation

General Limitations

- (1) Power to tax exists for the general welfare; should be exercised only *for a public purpose*
- (2) Might be justified as for public purpose even if the immediate beneficiaries are private individuals
- (3) Tax should not be confiscatory: If a tax measure is so unconscionable as to amount to confiscation of property, the Court will invalidate it. But invalidating a tax measure must be exercised with utmost caution, otherwise, the State's power to legislate for the public welfare might be seriously curtailed
- (4) Taxes should be uniform and equitable [Sec. 28(1), Art. VI]

Judicial review for unconscionable and unjust tax amounting to confiscation of property

The legislature has discretion to determine the nature, object, extent, coverage, and situs of taxation. But where a tax measure becomes so unconscionable and unjust as to amount to confiscation of property, courts will not hesitate to strike it down; the power to tax cannot override constitutional prescriptions. [Tan v. del Rosario, (1994)]

Specific Limitations

(1) Uniformity of taxation

General Rule: Simply *geographical uniformity*, meaning it operates with the same force and effect in every place where the subject of it is found

Exception: Rule does not prohibit classification for purposes of taxation, provided the requisites for valid classification are met. [Ormoc Sugar v. Treasurer of Ormoc (1968)]

(2) Tax Exemptions

No law granting any tax exemption shall be passed without the concurrence of a *majority of all the Members* of Congress [Sec. 28 (4), Art. VI]

There is no vested right in a tax exemption. Being a mere *statutory privilege*, a tax exemption may be modified or withdrawn at will by the granting authority. [Republic v. Caguioa (2009)]

Exemptions may either be constitutional or statutory.

- (1) If statutory, it has to have been passed by majority of all the members of Congress [Sec. 28 (4), Art. VI]
- (2) Constitutional exemptions [Sec. 28(3), Art. VI]

Requisite: Exclusive Use

- (a) **Educational institutions** (both profit and non-profit used actually, directly and exclusively for educational purposes): Benefits redound to students, but only applied to property taxes and not excise taxes
- (b) **Charitable institutions:** Religious and charitable institutions give

considerable assistance to the State in the improvement of the morality of the people and the care of the indigent and the handicapped

- (c) **Religious property:** Charitable Institutions, churches, and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings and improvements, actually, directly and exclusively used for religious, charitable or educational purposes

B. REQUISITES FOR VALID EXERCISE

B.1 POLICE POWER

Tests for Validity of Exercise of Police Power

- (1) Lawful Subject: Interest of the general public (as distinguished from a particular class required exercise). This means that the activity or property sought to be regulated affects the general welfare.
- (2) Lawful Means: Means employed are reasonably necessary for the accomplishment of the purpose, and are not unduly oppressive. [*Planters Products v. Fertiphil Corp.* (2008)]

B.2 EMINENT DOMAIN

Requisites:

- (a) Private property
- (b) Genuine necessity - inherent/presumed in legislation, but when the power is delegated (e.g. local government units), necessity must be proven.
- (c) For public use - Court has adopted a *broad* definition of "public use," following the U.S. trend
- (d) Payment of just compensation
- (e) Due process [*Manapat v. CA* (2007)]

B.3 TAXATION

Equal protection clause: Taxes should be (a) uniform (persons or things belonging to the same class shall be taxed at the same rate) and (b) equitable (taxes should be apportioned among the people according to their ability to pay)

Progressive system of taxation: The rate increases as the tax base increases, with social justice as basis. (Taxation here is an instrument for a more equitable distribution of wealth.)

Delegated tax legislation: Congress may delegate law-making authority when the Constitution itself specifically authorizes it.

C. SIMILARITIES AND DIFFERENCES

Similarities [*Nachura*]

- (1) Inherent in the State (Exercised even without need of express constitutional grant)
- (2) Necessary and indispensable (State cannot be effective without them)
- (3) Method by which state interferes with private property
- (4) Presuppose equivalent compensation
- (5) Exercised primarily by the legislature

Differences

<i>Police Power</i>	<i>Eminent Domain</i>	<i>Taxation</i>
Compensation		
None (The altruistic feeling that one has contributed to the public good [Nachura])	Just compensation (Full and fair equivalent of the property taken)	None (The protection given and public improvements instituted by the State because of these taxes [Nachura])
Use of Property		
Not appropriated for public use	Appropriated for public use	Use taxing power as an implement for the attainment of a legitimate police objective—to regulate a business or trade
Objective		
	Property taken for public use; it is not necessarily noxious	Earn revenue for the government
Coverage		
Liberty and Property	Property rights only	Property rights only
Primary Purpose		
To regulate; to promote general comfort, health and prosperity	To devote property to public use	To raise revenue
Exercise of Power		
Only by the government	May be exercised by private entities when right is conferred by law	Only by the government
Basis		
Self-preservation and self-protection		Life Blood Theory

Note: In the exercise of police power, the deprivation of the use of the property may be total, but it will not constitute compensable taking if nobody else acquires use of the property or any interest therein. [*Dipidio Earth-Savers Multipurpose Association v. Gozun, G.R. No. 157882, March 30, 2006*]

If regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax. [*Gerochi v. Department of Energy (2007)*]

License Fee (under police power) versus Tax

<i>License Fee</i>	<i>Tax</i>
Basis	
Police Power: to regulate	Taxation Power: to raise revenue
Limitation	
Amount is limited to: (a) cost of permit and (b) reasonable police regulation <i>Exception:</i> When the license fee is imposed on a non-useful/beneficial occupation, such as the practice of hygienic and aesthetic massage, the fee may be large without being a tax. [<i>Physical Therapy Organization v. Municipal Board of Manila (1957)</i>]	Rate or amount to be collected is unlimited, provided not confiscatory
Object	
Paid for the privilege of doing something and may be revoked when public interest so requires	Persons or property
Effect of Non-Payment	
Business becomes illegal	Business or activity does not become illegal

D. DELEGATION

D.1 POLICE POWER

Legislature

Police power is lodged primarily in the national legislature.

Executive

By virtue of a valid delegation of legislative power, it may also be exercised by the president, administrative bodies, and lawmaking bodies of LGUs. [Sec. 16, R.A. 7160]

[T]his power is limited only by the Acts of Congress and those fundamental principles which lie at the foundation of all republican forms of government. An Act of the Legislature which is obviously and undoubtedly foreign to any of the purposes of the police power and interferes with the ordinary enjoyment of property would, without doubt, be held to be invalid. [Churchill and Tait v. Rafferty (1915)]

Rep. Act No. 7924 does not grant the MMDA with police power, let alone legislative power, and all its functions are administrative in nature. [MMDA v. Bel-Air Village Association (2000)]

But the MMDA is duty-bound to confiscate/suspend or revoke drivers' licenses in the exercise of its mandate of transport and traffic management, as well as the administration and implementation of all traffic enforcement operations, traffic engineering services and traffic education programs. [MMDA v. Garin (2005); Sec. 3(b), Rep. Act No. 7924]

D.2 EMINENT DOMAIN

The power of the legislature to confer, upon municipal corporations and other entities within the State, general authority to exercise the right of eminent domain cannot be questioned by the courts, but that general authority of municipalities or entities must not be confused with the right to exercise it in particular instances.

The moment the municipal corporation or entity attempts to exercise the authority conferred, it must comply with the conditions accompanying the authority. The necessity for conferring the authority upon a municipal corporation to exercise the right of eminent

domain is admittedly within the power of the legislature.

A statute or charter or a general law may confer the right of eminent domain upon a private entity. [Tenorio v. Manila Railroad Co. (1912)]

As Exercised By Congress	As Exercised By Delegates
Extent of Power	
Pervasive and all-encompassing	Can only be as broad as the enabling law and the conferring authorities want it to be
Question of Necessity	
Political question	Justiciable question. RTC has to determine whether there is a genuine necessity for its exercise, as well as what the property's value is. If not justiciable, there is grant of special authority for special purpose
Re: Private Property	
	Delegate cannot expropriate private property already devoted to public use

D.3 TAXATION

Power may be exercised by:

- (1) Legislature (primarily)
- (2) Local legislative bodies [Sec. 5, Art. X]
- (3) President (to a limited extent, when granted delegated tariff powers under Sec. 28 (2) Art. VI)

II. Private Acts and the Bill Of Rights

In General

It is a declaration and enumeration of a person's fundamental civil and political rights. It also imposes safeguards against violations by the government, by individuals, or by groups of individuals.

"The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder." [People v. Marti (1991)]

It is self-executing. [See Gamboa v. Teves (2011)]

Article III contains the chief protection for human rights but the body of the Constitution guarantees other rights as well.

- (1) **Civil rights** – rights that belong to an individual by virtue of his citizenship in a state or community (e.g. rights to property, marriage, freedom to contract, equal protection, etc.)
- (2) **Political rights** – rights that pertain to an individual's citizenship vis-à-vis the management of the government (e.g. right of suffrage, right to petition government for redress, right to hold public office, etc.)
- (3) **Social and economic rights** – rights which are intended to insure the well-being and economic security of the individual
- (4) **Rights of the accused** – civil rights intended for the protection of a person accused of any crime

Human rights have a primacy over property rights. The rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of civil institutions. [PBME v. Philippine Blooming Mills, Co. (1973)]

Bases and Purpose

Bases:

- (1) Importance accorded to the dignity and worth of the individual.
- (2) Protection against arbitrary actions of government and other members of society

Purpose:

- (1) To preserve democratic ideals
- (2) To safeguard fundamental rights
- (3) To promote the happiness of an individual

The Bill of Rights is designed to preserve the ideals of liberty, equality and security "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, and the scorn and derision of those who have no patience with general principles." [Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc. (1973)]

The purpose of the Bill of Rights is to withdraw "certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's rights to life, liberty and property, to free speech, or free press, freedom of worship and assembly, and other fundamental rights may not be submitted to a vote; they depend on the outcome of no elections." [West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638]

Accountability

Rule: The Bill of Rights cannot be invoked against acts of private individuals. The equal protection erects no shield against private conduct, however discriminatory or wrongful. [Yrasuegui v. PAL (2008)]

Constitutional protection applies to government action and is meant as a restraint against sovereign authority. The Bill of Rights is not meant to be invoked against private individuals, and governs relations between individuals and the state. [People v. Marti (1991)]

Important Notes:

- (1) *See Zulueta v. CA (1996)*, where the Bill of Rights was invoked and applied by the Court against a private party: *The constitutional injunction declaring the privacy of communication and correspondence to be inviolable is no less applicable simply because it is the wife who is the party against whom the constitutional provision is to be enforced.* The intimacies between husband and wife do not justify any one of them in breaking the drawers and cabinets of the other and in ransacking them for any telltale evidence of marital infidelity. A person, by contracting marriage, does not shed his/her integrity or his right to privacy as an individual and the constitutional protection is ever available to him or to her. [*Zulueta v. CA (1996)*]
- (2) Compare with statutory due process, which may be invoked against private individuals. [*See, generally, labor cases on illegal termination.*] This does not form part of the Bill of Rights.

III. Due Process

Art. III, Sec. 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.

Art. XIII, Sec. 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

In General

Due process of law simply states that "[i]t is part of the sporting idea of fair play to hear 'the other side' before an opinion is formed or a decision is made by those who sit in judgment." [*Ynot v. IAC (1987)*]

It covers any governmental action which constitutes a deprivation of some person's life, liberty, or property.

Definition

Due process furnishes a standard to which the governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. xxx It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively pit, arbitrariness is ruled out and unfairness avoided. xxx Correctly it has been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. [*Ichong v. Hernandez (1957)*]

A law hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. [*Darhmouth College v. Woodward, 4 Wheaton 518*]

Life is also the right to a good life. [*Bernas*] It includes the right of an individual to his body in its completeness, free from dismemberment, and extends to the use of God-given faculties which make life enjoyable. [*Malcolm*]

Liberty “includes the right to exist and the right to be free from arbitrary personal restraint or servitude. [It] includes the right of the citizen to be free to use his faculties in all lawful ways[.]” [*Rubi v. Provincial Board*]

Property is anything that can come under the right of ownership and be the subject of contract. It represents more than the things a person owns; it includes the right to secure, use and dispose of them. [*Torraco v. Thompson*, 263 US 197]

Scope and limitations

Universal in application to all persons without regard to any difference in race, color or nationality.

Artificial persons are covered by the protection but only insofar as their property is concerned [*Smith Bell and Co. v. Natividad*, 40 Phil. 163]

The guarantee extends to aliens and includes the means of livelihood. [*Villegas v. HiuChiong*, 86 SCRA 275]

The due process clause has to do with the legislation enacted in pursuance of the police power. xxx The guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the subject sought to be attained. [*Ichong v. Hernandez* (1957)]

Noted exceptions to due process

- (1) The **conclusive presumption**, bars the admission of contrary evidence as long as such presumption is based on human experience or there is a rational connection between the fact proved and the fact ultimately presumed there from.
- (2) There are instances when the **need for expeditious action** will justify omission of these requisites—e.g. in the summary abatement of a nuisance *per se*, like a mad dog on the loose, which may be killed on

sight because of the immediate danger it poses to the safety and lives of the people.

- (3) Pornographic materials, contaminated meat and narcotic drugs are **inherently pernicious** and may be summarily destroyed.
- (4) The passport of a **person sought for a criminal offense** may be cancelled without hearing, to compel his return to the country he has fled.
- (5) Filthy restaurants may be summarily padlocked in the **interest of the public health** and bawdy houses **to protect the public morals**. [*Ynot v. IAC* (1987)]

In such instances, **previous judicial hearing may be omitted without violation of due process** in view of: 1) the nature of the property involved; or 2) the urgency of the need to protect the general welfare from a clear and present danger.

A. RELATIVITY OF DUE PROCESS

The concept of due process is flexible for not all situations calling for procedural safeguards call for the same kind of procedure. [*Secretary of Justice v. Lantion* (2000)]

Consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.” [*Cafeteria & Restaurant Workers Union v. McElroy* (1961)]

To say that the concept of due process is flexible does not mean that judges are at large to apply it to any and all relationships. Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure. [*Morrissey v. Brewer* (1972)]

B. PROCEDURAL AND SUBSTANTIVE DUE PROCESS

B.1 SCOPE

Procedural Due Process – that aspect of due process which serves as a restriction on actions of judicial and quasi-judicial agencies of the government. It refers to the method or manner by which a law is enforced.

Concerned with government action on established process when it makes intrusion into the private sphere.

B.2 SUBSTANTIVE DUE PROCESS

Substantive due process, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. [*City of Manila v. Laguio (2005)*]

In other words, substantive due process looks to whether there is a sufficient justification for the government's action.

Substantive due process is an aspect of due process which serves as a restriction on the law-making and rule-making power of the government.

The law itself, not merely the procedures by which the law would be enforced, should be fair, reasonable, and just.

It guarantees against the arbitrary power even when exercised according to proper forms and procedure.

Requisites:

Due process of law means simply that

- (a) There shall be a law prescribed in harmony with the general powers of the legislative department of the Government;
- (b) This law shall be reasonable in its operation;
- (c) It shall be enforced according to the regular methods of procedure prescribed; and
- (d) It shall be applicable alike to all the citizens of the state or to all of a class. [*Rubi v. Provincial Board of Mindoro (1919)*]

B.3 PROCEDURAL DUE PROCESS

In Civil Proceedings

Requisites:

- (a) An **impartial court** of tribunal clothed with judicial power to hear and determine the matter before it.
- (b) **Jurisdiction** must be lawfully acquired over the person of the defendant and over the property subject matter of the proceeding [*Banco Español v. Palanca (1918)*]

Note: Notice is an essential element of due process, otherwise the Court will not acquire jurisdiction and its judgment will not bind the defendant.

To be meaningful, it must be both as to time and place.

Service of summons is not only required to give the court jurisdiction over the person of the defendant but also to afford the latter the opportunity to be heard on the claim made against him. Thus, compliance with the rules regarding the service of summons is as much an issue of due process as of jurisdiction. [*Sarmiento v. Raon (2002)*]

- (c) The defendant must be given an **opportunity to be heard**

Due process is satisfied as long as the party is accorded the opportunity to be heard. If it is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee. [*Bautista v. Court of Appeals (2004)*]

The SC reiterated that the right to appeal is not a natural right nor part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. [*Alba v. Nitorreda, 254 SCRA 753*]

- (d) **Judgment** must be rendered upon lawful hearing and must clearly explain its factual and legal bases. [*Sec. 14, Art. VIII; Banco Español-Filipino v. Palanca (1918)*]

Note: The allowance or denial of motions for extension rests principally on the sound discretion of the court to which it is addressed, but such discretion must be exercised wisely and prudently, with a view

to substantial justice. Poverty is recognized as a sufficient ground for extending existing period for filing. The right to appeal is part of due process of law. [*Reyes v. CA (1977)*]

In Administrative Proceedings

The Ang Tibay Rules:

- (1) Right to a hearing to present own case and submit evidence in support thereof.
- (2) Tribunal must consider the evidence presented.
- (3) Decision rendered must have support.
- (4) Evidence which supports the finding or conclusion is substantial (such relevant evidence as a reasonable mind accept as adequate to support a conclusion).
- (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.
- (6) The tribunal or any of its judges, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.
- (7) The tribunal should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. [*Ang Tibay v. CIR (1940)*]

In administrative proceedings, the essence of due process is to explain one's side. An actual hearing is not always an indispensable aspect of due process as long as the party was given the opportunity to defend his interests in due course. [*Lumiqued v. Estrada (1997)*]

In Criminal Proceedings

See Rights of the Accused, Topic 1 Criminal Due Process

In the conduct of the criminal proceedings, it cannot be said that the State has been denied due process unless there is an indication that the special prosecutor deliberately and

willfully failed to present available evidence or that other evidence could be secured. [*People v. Sandiganbayan (2012)*]

In Academic Disciplinary Proceedings

Requisites:

- (a) The students must be informed in writing of the nature and cause of any accusation against them;
- (b) They shall have the right to answer the charges against them, with the assistance of counsel, if desired;
- (c) They shall be informed of the evidence against them;
- (d) They shall have the right to adduce evidence in their own behalf;
- (e) The evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case [*Non v. Dames (1990)*]

In Labor Cases

The Labor Code requires twin requirements of notice and hearing for a valid dismissal.

However, the Court in *Serrano v. NLRC* clarified that this "procedural due process" requirement is not constitutional but merely statutory, hence, a violation of such requirement does not render the dismissal void.

There are three reasons why violation by the employer of the notice requirement cannot be considered a denial of due process resulting in the nullity of the employee's dismissal or layoff:

- (1) The Due Process Clause of the Constitution is a limitation on governmental powers. It does not apply to the exercise of private power, such as the termination of employment under the Labor Code.
- (2) Notice and hearing are required under the Due Process Clause before the power of organized society are brought to bear upon the individual. This is obviously not

the case of termination of employment under Art. 283.

- (3) The employer cannot really be expected to be entirely an impartial judge of his own cause. [*Serrano v. NLRC (2000)*]

C. SUBSTANTIVE DUE PROCESS

Laws which interfere with life, liberty or property satisfy substantive due process when there is:

- (a) **Lawful object** i.e. the interests of the public in general (as distinguished from those of a particular class) require the intervention of the State, and
- (b) **Lawful means** i.e. means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive on individuals. [*US v. Toribio (1910)*]

Publication of laws is part of substantive due process. It is a rule of law that before a person may be bound by law, he must be officially and specifically informed of its contents. For the publication requirement, "laws" refer to all statutes, including those of local application and private laws. This does not cover internal regulations issued by administrative agencies, which are governed by the Local Government Code. Publication must be full, or there is none at all. [*Tañada v. Tuvera (1986)*]

Governmental functions are classified into:

- (1) **Constituent** – constitute the very bonds of society and are compulsory in nature (i.e. public order, administration of justice and foreign relations)
- (2) **Ministrant** – undertaken only by way of advancing the general interests of society, and are merely optional on the part of the State (i.e. public education, public charity and regulations of trade and industry) [*Concurring Opinion of Justice Fernando in ACCFA v. CUGCO (1969)*]

D. CONSTITUTIONAL AND STATUTORY DUE PROCESS

D.1 CONSTITUTIONAL DUE PROCESS

[*Agabon v. NLRC (2004)*]

Basis: Constitution

Requirements: Procedural and Substantive

Purpose:

- (1) Protects individual against government; and
- (2) Assures him of his rights in criminal, civil and administrative proceedings

Effect of breach: government action void

D.2. STATUTORY DUE PROCESS

Basis: Statute. Cases where due process is statutory notably include (1) labor termination cases, and (2) the right to appeal, .e.g. Statutory Due Process in Labor Cases.

Basis: Labor Code

Requirements:

- (1) Procedural (the manner of dismissal, i.e. after LC requirements are satisfied)
- (2) Substantive (valid and authorized causes of employment termination)

Purpose: Protects employees from being unjustly terminated without just cause after notice and hearing.

Effect of breach: Does not void action; the law provides for other remedies (e.g. damages, reinstatement).

Constitutional due process protects the individual from the government and assures him of his right in criminal, civil, or administrative proceedings; while statutory due process found in the Labor Code and Implementing rules protects employees from being unjustly terminated without just cause and hearing. [*Agabon v. NLRC (2004)*]

E. HIERARCHY OF RIGHTS

When the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Because these freedoms are “delicate and vulnerable, as well as supremely precious in our society” and the “threat of sanctions may deter their exercise almost as potently as the actual application of sanctions,” they “need breathing space to survive,” permitting government regulation only “with narrow specificity.” [*Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc. (1973)*]

If the liberty involved were freedom of the mind or the person, the standard for the validity of governmental acts is much more rigorous and exacting, but where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measure is wider. [*Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila (1967)*]

Running through various provisions of the Constitution are various provisions to protect property—but always with the explicit or implicit reminder that property has a social dimension and that *the right to property is weighted with a social obligation*. [BERNAS]

F. JUDICIAL STANDARDS OF REVIEW

F.1. “RATIONAL BASIS TEST”

There is an evil at hand for correction and the particular legislative measure was a rational way to correct it. [*Williamson v. Lee Optical (1955)*]

This test is applicable for economic, property, commercial legislation. [*White Light Corporation v. City of Manila (2009)*]

F.2. “STRICT SCRUTINY TEST”

This test is triggered when a fundamental constitutional right is limited by a law, (i.e. freedom of the mind and curtailment of political process).

This requires the government to show an overriding or compelling government interest so great that it justifies the limitation of fundamental constitutional rights. The courts make the decision of whether or not the purpose of the law makes the classification necessary.

There is **compelling state interest** when:

(1) The state have a compelling reason/interest to reach into such legislation infringing into the private domain; and

(2) There is no other alternative

Strict scrutiny was applied in determining whether the requirements of substantive due process were met in an ordinance challenged in as unconstitutional in *White Light*. The **requirements of due process** that must concur (as held in the case) are:

(a) Interest of the public generally, as opposed to a class;

(b) Means must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive of private rights

(c) No other alternative less intrusive of private rights

(d) Reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment. [*White Light Corporation v. City of Manila (2009)*]

F.3. “INTERMEDIATE SCRUTINY TEST”

A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well. [*White Light Corporation v. City of Manila (2009)*]

Summary of *White Light* Levels of Scrutiny

<i>Level of Scrutiny</i>	<i>Rights Involved</i>	<i>Requisites for Validity</i>
Rational Basis	Economic, property, commercial legislation	(a) Legitimate government interest (b) Purpose and means correspondence
Intermediate/Heightened Scrutiny	Gender, illegitimacy	(a) Substantial government interest (b) Availability of less restrictive means
Strict Scrutiny	<ul style="list-style-type: none"> Freedom of the mind, restriction on political process Fundamental rights: freedom of expression, speech, suffrage (U.S.) Judicial access, interstate commerce 	(a) Compelling state interest (b) Absence of less restrictive means

G. VOID-FOR-VAGUENESS DOCTRINE

Void for Vagueness

An act is vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its common meaning and differ as to its application.

A statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. The statute is repugnant to the Constitution in 2 respects:

- (1) It violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid;
- (2) It leaves law enforcers an unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the government muscle. [*Southern*

Hemisphere v. Anti-Terrorism Council (2010)]

An accused is denied the right to be informed of the charge against him and to due process where the statute itself is couched in such indefinite language that it is not possible for men of ordinary intelligence to determine therefrom what acts/omissions are punished. [*People v. Nazario* (1988)]

[This doctrine] can only be invoked against that species of legislation that is utterly vague on its face, i.e., that which cannot be clarified either by a saving clause or by construction. The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct. It must be stressed, however, that the vagueness doctrine merely requires a reasonable degree of certainty for the statute to be upheld – not absolute precision or mathematical exactitude. [*Estrada v. Sandiganbayan*]

Comparison with Overbreadth Doctrine

The **overbreadth doctrine** decrees that "a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms." [*Southern Hemisphere, supra*]

The **void-for-vagueness doctrine** is subject to the same principles governing overbreadth doctrine. For one, it is also an analytical tool for a "facial" challenge of statutes in free speech cases. Like overbreadth, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications.

General rule: Void-for-vagueness and overbreadth are inapplicable to penal statutes. (**Rationale:** statutes have a general *in terrorem* effect, which is to discourage citizens from committing the prohibited acts.)

Exception: Said doctrines apply to penal statutes when

- (1) The statute is challenged as applied; or
- (2) The statute involves free speech (**Rationale:** Statute may be facially challenged in order to counter the "chilling effect" of the same.) [*Disini v. Sec. of Justice (2014)*, on the constitutionality of the Cybercrime Law]

Note: As-applied v. Facial Challenges

Distinguished from an **as-applied challenge** which considers only extant facts affecting real litigants, a **facial invalidation** is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities. [*Disini, supra*]

IV. Equal Protection

A. CONCEPT

Definition

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.

Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.

It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances. [*Ichong v. Hernandez (1957)*]

Scope

Natural and juridical persons (the equal protection clause extends to artificial persons but only insofar as their property is concerned.)

- (1) A corporation as an artificial person is protected under the Bill of Rights against denial of due process, and it enjoys the equal protection of the law. [*Smith, Bell and Co., v. Natividad (1919)*]
- (2) A corporation is also protected against unreasonable searches and seizures. [*See Stonehill v. Diokno (1967)*]
- (3) It can only be proceeded against by due process of law, and is protected against unlawful discrimination. [*Bache and Co. v. Ruiz (1971)*]

B. REQUISITES FOR VALID CLASSIFICATION

- (a) It must rest on **substantial distinctions** which make real differences;
- (b) It must be **germane** to the purpose of the law;
- (c) It must **not be limited to existing conditions** only.

An ordinance was declared void because it taxes only centrifugal sugar produced and exported by the Ormoc Sugar Company and none other, such that if a new sugar central is established in Ormoc, it would not be subject to the ordinance. [*Ormoc Sugar Co. v. Treasurer of Ormoc City (1968)*]

- (d) **Apply equally to all** members of the same class. [*People v. Cayat (1939)*]

Presumption of Validity

All classifications made by law are generally presumed to be valid unless shown otherwise by petitioner. [*Lacson v. Executive Secretary (1999)*]

Aliens

General Rule: The general rule is that a legislative act may not validly classify the citizens of the State on the basis of their origin, race or parentage.

Exceptions:

- (1) In times of great and imminent danger, such as a threatened invasion or war, such a classification is permitted by the Constitution when the facts so warrant (e.g. discriminatory legislation against Japanese citizens during WWII).
- (2) The political rights of aliens do not enjoy the same protection as that of citizens.
- (3) Statutes may validly limit to citizens exclusively the enjoyment of rights or privileges connected with the public

domain, the public works, or the natural resources of the State. The rights and interests of the state in these things are not simply political but also proprietary in nature; and so the citizens may lawfully be given preference over aliens in their use or enjoyment.

B.1 EXAMPLES OF VALID CLASSIFICATION

Alien v. National

The Court upheld the Retail Trade Nationalization Law despite the objection that it violated the EP clause, because there exists real and actual, positive and fundamental differences between an alien and a national. [*Ichong v. Hernandez (1957)*]

Filipino Female Domestics Working Abroad

They are a class by themselves because of the special risks to which their class was exposed. [*Phil Association of Service Exporters v. Drilon (1988)*]

Land-Based v. Sea-Based Filipino Overseas Workers

There is dissimilarity as to work environment, safety, danger to life and limb, and accessibility to social, civil and spiritual activities. [*Conference of Maritime Manning Agencies v. POEA (1995)*]

Qualification for Elective Office

Disqualification from running in the same elective office from which he retired of a retired elective provincial/municipal official who has received payment of retirement benefits and who shall have been 65 years old at the commencement of the term of office to which he seeks to be elected is valid. [*Dumlao v. Comelec (1980)*]

Election Officials v. Other Municipal Officials

RA 8189 (Voters' Registration Act) prohibits election officers from holding office in a particular city or municipality for more than four (4) years. The classification is germane to the law since the risk sought to be addressed is cheating during elections. [*De Guzman v. COMELEC (2000)*]

Office of the Ombudsman

Allowing the Ombudsman to start an investigation based on an anonymous letter does not violate the equal protection clause. The Office of the Ombudsman is different from other investigatory and prosecutory agencies of government because those subject to its jurisdiction are public officials who, through official pressure and influence, can quash, delay or dismiss investigations against them. [*Almonte v. Vasquez (1995)*]

Print v. Broadcast Media

There are substantial distinctions between the two to warrant their different treatment under *BP 881*. [*Telecommunications and Broadcast Attorneys of the Phil v. COMELEC (1998)*]

C. STANDARDS FOR JUDICIAL REVIEW

Serrano v. Gallant Maritime (2009) introduced a modification in equal protection jurisprudence by using the **three-level review** used in due process cases. In effect, the level of review when it comes to equal protection challenges may follow the following format:

- (1) Whether the State was justified in making a classification at all. (three-level scrutiny)
 - (a) **Rational Basis Test** – The classification should bear a reasonable relation to the

government's purpose or legitimate state interest

Notes: Important when there is no plausible difference between the disadvantaged class and those not disadvantaged.

Also important when the government attaches a morally irrelevant and negative significance to a difference between the advantaged and the disadvantaged.

- (b) **Strict Scrutiny Test** – A legislative classification which impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class is presumed unconstitutional. The burden is upon the government to prove that the classification is necessary to achieve a compelling state interest and that it is the least restrictive means to protect such interest. It is applied when the classification has a "suspect basis".

Suspect classes – A classification that violates a fundamental right, or prejudices a person accorded special protection by the Constitution [*Serrano v. Gallant*]. May therefore include a classification based on income.

(Compare to the **US definition**: classes subject to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process. Income classification will not trigger strict scrutiny.)

This test is usually applied to cases involving classifications based on race, national origin, religion, alienage, denial of the right to vote, migration, access to courts, and other rights recognized as fundamental

(c) **Intermediate Scrutiny Test** – Court accepts the articulated purpose of the legislation, but it closely scrutinizes the relationship between the classification and the purpose based on a spectrum of standards, by gauging the extent to which constitutionally guaranteed rights depend upon the affected individual interest. Government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest. Applicable to certain sensitive but not suspect classes;

certain important but not fundamental interest.

(2) Whether the classification was valid. (4-pronged test of valid classification in *People v. Cayat*)

Alternative thought: In *Serrano v. Gallant Maritime*, the Court seems to imply that the Test of Valid Classification is to be applied under the Rational Basis standard. (Note that in *Serrano*, where the Court applied Strict Scrutiny, the Test of Valid Classification was mentioned but *not* applied.) *Serrano* does not appear to have been reapplied (except in separate opinions), hence its application remains unclear.

Summary of *Serrano v. Gallant* Levels of Scrutiny

<i>Level of Scrutiny</i>	<i>Classification Made</i>	<i>Requisites for Validity</i>
Rational Basis	Classifications, in general	Test of valid classification (a) Substantial distinction; (b) Germane to the purpose of the law; (c) Not limited to existing conditions only; (d) Must apply equally to all within the class
Intermediate/Heightened Scrutiny	Gender, illegitimacy	(a) Substantial government interest (b) Availability of less restrictive means
Strict Scrutiny	Affects fundamental rights; or suspect classification Suspect classification: • PHL: A class given special protection by the Constitution • US: Race	(a) Compelling state interest (b) Absence of less restrictive means

V. Searches and Seizures

A. CONCEPT

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. [Art. III, Sec. 2]

Nature

- (1) **Personal** – It may be invoked only by the person entitled to it. [*Stonehill v. Diokno* (1967)]

It may be waived expressly or impliedly only by the person whose right is invaded, not by one who is not duly authorized to effect such waiver. [*People v. Damaso* (1992)]

This right is a personal right invocable by those whose rights have been infringed or threatened to be infringed. [*Valmonte v. De Villa* (1989)]

- (2) **Directed Against the Government and Its Agencies (State Action Requirement)**

The right cannot be set up against acts committed by private individuals. The right applies as a restraint directed only against the government and its agencies tasked with the enforcement of the law. The protection cannot extend to acts committed by private individuals so as to bring them within the ambit of alleged unlawful intrusion by the government. Warrant is needed if

the government requests for the search and seizure: but, if at behest of a private person or establishment for its own private purposes the right against unreasonable searches and seizures cannot be invoked. [*People v. Marti* (1991); see also *Yrasuegui v. Philippine Airlines* (2008)]

What constitutes a reasonable or unreasonable search and seizure in any particular case is purely a judicial question, determinable from a consideration of the circumstances involved. [*Valmonte v. De Villa*, (1989)]

Scope

(1) Natural Persons

It protects all persons including aliens [*Qua Chee Gan v. Deportation Board* (1963)]

(2) Artificial Persons

Artificial persons (e.g. corporations) are protected to a limited extent. [*Bache and Co. Inc. v. Ruiz* (1971)] The opening of their account books is not protected, by virtue of police and taxing powers of the State.

B. WARRANT REQUIREMENT

Purpose

- (1) **Search Warrant** – to gain evidence to convict
- (2) **Warrant of Arrest** – to acquire jurisdiction over the person of the accused

The warrant must refer to one specific offense. [*Castro v. Pabalan* (1976)]

The *Dangerous Drugs Act* is a special law that deals specifically with dangerous drugs which are subsumed into “prohibited” and “regulated” drugs, and defines and penalizes categories of offenses which are closely related or which belong to the same

class or species; thus, one search warrant may be validly issued for several violations thereof. [*People v. Dichoso* (1993)]

Search Warrant – an order in writing, issued in the name of the People of the Philippines, signed by a judge or justice of peace, directed to a peace officer, commanding him to search for personal property and bring it before the court.

Requisites (Search Warrant):

(a) Existence of probable cause

Probable cause – such facts and circumstances which would lead a reasonably discreet and prudent man to believe that (a) an offense has been committed and that (b) the objects sought in connection with the offense are in the place sought to be searched. [*Burgos v. Chief of Staff* (1984)]

Cf. for Warrant of Arrest – such facts and circumstances that would lead a reasonably discreet and prudent man to believe that (a) a crime has been committed and (b) the person to be arrested is probably guilty thereof. [*Allado v. Diokno* (1994)]

(b) Determination of probable cause personally by the judge.

On determining probable cause: The magistrate must make an exhaustive and probing examination of witnesses and applicant and not merely routine or pro forma examination [*Nala v. Barroso, Jr.* (2003)]

The determination of probable cause calls for an exercise of judgment after a judicial appraisal of the facts and should not be allowed to be delegated in the absence of any rule to the contrary.

(c) After personal examination under oath or affirmation of the complainant and the witnesses he may produce.

How it is done: In the form of searching questions and answers, in writing and under oath [*Rule 126, Sec. 6, ROC*]

- Mere affidavits of the complainant and his witnesses are thus not sufficient.
- The examining Judge has to take depositions in writing of the complainant and the witnesses he may produce and attach them to the record.
- Such written deposition is necessary in order that the Judge may be able to properly determine the existence or non-existence of the probable cause, to hold liable for perjury the person giving it if it will be found later that his declarations are false.
- It is axiomatic that the examination must be probing and exhaustive, not merely routine or *pro-forma*, if the claimed probable cause is to be established.

There must be a conduct of own inquiry regarding intent and justification of the application

- The examining magistrate must not simply rehash the contents of the affidavit but must make his own inquiry on the intent and justification of the application. [*Roan v. Gonzales* (1984)]

Oath – any form of attestation that he is bound in conscience to perform an act faithfully or truthfully; an outward pledge given by the person taking it that his attestation or promise is made under an immediate sense of his responsibility to God

Requisites:

- Must refer to facts
- Such facts are of personal knowledge of the petitioner or applicant or witnesses. Not hearsay.

Test of sufficiency of an oath

“Whether or not it was drawn in a manner that perjury could be charged against the affiant and he be held liable for damages.”

- (d) On the basis of their personal knowledge of the facts they are testifying to. [*Nala v. Barroso, Jr. (2003)*; *Burgos v. AFP (1984)*; *Roan v. Gonzales (1986)*; *People v. Malmstead (1991)*]

The purpose of having personal knowledge by the complainant and witnesses and the sufficiency of the warrant is to convince the magistrate seeking the issuance of the warrant that there is probable cause.

- (e) The warrant must describe particularly the place to be searched and the persons or things to be seized.

Requirement is primarily meant to enable the law enforcers serving the warrant to (1) readily identify the properties to be seized and thus prevent them from seizing the wrong items; and (2) leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. [*People v. Tee (2003)*]

Place to Be Searched

The search warrant issued to search petitioner's compound for unlicensed firearms was held invalid for failing to describe the place with particularity, considering that the compound was made up of 200 buildings, 15 plants, 84 staff houses, one airstrip etc. spread out over 155 hectares. [*PICOP v. Asuncion (1999)*]

Description of Place/Things

The description of the property to be seized need not be technically accurate or precise. Its nature will vary according to whether the identity of the property is a matter of concern. The description is required to be specific only insofar as the circumstances will allow. [*Kho v. Judge Makalintal (1999)*]

A search warrant may be said to particularly describe the things to be seized when the (a) description therein is as specific as the circumstances will ordinarily allow [*People v.*

Rubio, 57 Phil 384]; or (b) when the description expresses a conclusion of fact, not of law, by which the warrant officer may be guided in making the search and seizure; or (c) when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued. [*Bache and Co. v. Ruiz, 37 SCRA 823*]

General Rule: the warrant must indicate the particular place to be searched and person or thing to be seized.

Exception: If the nature of the goods to be seized cannot be particularly determined.

- the nature of the thing is general in description
- the thing is not required of a very technical description [*Alvarez v. CFI (1937)*]

Description of Persons Searched

Search warrant is valid despite the mistake in the name of the persons to be searched. The authorities conducted surveillance and test-buy operations before obtaining the search warrant and subsequently implementing it. They had personal knowledge of the identity of the persons and the place to be searched, although they did not specifically know the names of the accused. [*People v. Tiu Won Chua (2003)*]

A John Doe search warrant is valid. There is nothing to prevent issue and service of warrant against a party whose name is unknown. [*People v. Veloso (1925)*]

General Warrant – one that:

- (1) Does not describe with particularity the things subject of the search and seizure; or
- (2) Where probable cause has not been properly established.

Effect: It is a void warrant. [*Nolasco v. Paño (1985)*]

Exception to General Warrants: General descriptions will not invalidate the entire

warrant if *other* items have been particularly described. [*Uy v. BIR (2000)*]

Conduct of the Search [Sec. 7, Rule 126, ROC]

- (1) In the presence of a lawful occupant thereof or any member of his family, OR
- (2) If occupant or members of the family are absent, in the presence of 2 witnesses of sufficient age and discretion, residing in the same locality.

Failure to comply with *Sec. 7 Rule 126* invalidates the search. [*People v. Gesmundo (1993)*]

When Forcible Entry Justified

Force may be used in entering a dwelling if justified by *Rule 126 ROC*. e.g. Occupants of the house refused to open the door despite the fact that the searching party knocked several times, and the agents saw suspicious movements of the people inside the house. [*People v. Salangit (2001)*]

Unlawful Search

Police officers arrived at appellant's residence and "side-swiped" appellant's car (which was parked outside) to gain entry into the house. Appellant's son, who is the only one present in the house, opened the door and was immediately handcuffed to a chair after being informed that they are policemen with a warrant to search the premises. [*People v. Benny Go (2003)*]

C. WARRANTLESS SEARCHES

General rule: Probable cause required.

"The essential requisite of probable cause must still be satisfied before a warrantless search and seizure can be lawfully conducted." In these cases, probable cause (warrantless searches) must be "based on reasonable ground of suspicion or belief

that a crime has been committed or is about to be committed." [*People v. Aruta (1998)*]

N.B. In *Aruta*, the standards for probable cause are different from those required for the issuance of warrants. *Aruta* implies that the reasonableness of a warrantless search is determined by the (1) information received and used as a basis for the search, and (2) additional factors and circumstances. The two, taken together, constitute the probable cause which justifies warrantless searches and seizures. [*Aruta, supra*]

Warrantless Searches Recognized By Jurisprudence

Summary [*People v. Aruta, supra*]

- (1) Search incidental to a lawful arrest (*ROC Rule 113, Sec. 5*)
- (2) Plain view doctrine
- (3) Search of a moving vehicle
- (4) Consented warrantless search (waiver of right against unreasonable searches and seizures)
- (5) Customs search
- (6) Stop and frisk
- (7) Exigent and emergency circumstances
- (8) Visual search at checkpoints – not among those enumerated in *People v. Aruta*, but also recognized as an exception to the warrant requirement by *Aniag v. COMELEC (1994)* and *Valmonte v. De Villa (1989, 1990)*

(1) Search Incident to a Lawful Arrest

A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant. [Sec. 12, Rule 126, Rules of Court]

The provision is declaratory in the sense that it is confined to the search, without a search warrant, of a person who had been arrested.

It is also a general rule that, as an incident of an arrest, the place or premises where the arrest was made can also be searched without a search warrant. In this case, the extent and reasonableness of the search must be decided on its own facts and circumstances.

What must be considered is the balancing of the individual's right to privacy and the public's interest in the prevention of crime and the apprehension of criminals. [*Nolasco v. Pano* (1985)]

Test for validity

- (1) Item to be searched was within the arrestee's custody;
- (2) Search was contemporaneous with the arrest

Under the Rules of Court, a person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense. As an incident of an arrest, the premises where the arrest was made can also be searched without search warrant. [*Nolasco v. Cruz Paño* (1985)]

An "arrest being *incipiently* illegal, it logically follows that the *subsequent* search was similarly illegal." [*People v. Aruta, supra*]

Arresting officer may search: [*Chimel v. California* (1969)]

- (1) The arrestee's person to:
 - (a) discover or weapons and
 - (b) Seize evidence to prevent concealment or destruction; and
- (2) The area within the immediate control of the arrestee, i.e. area from which he might gain possession of a weapon or destructible evidence.

Immediate control – immediate area to the defendant's person where there are nearby weapons he could grab to attack the officer or what he has in his pocket.

It will be reasonable for officer to confiscate whatever may be used to threaten his life or limb.

People v. Aruta (1998)

Short facts: P/Lt. Abello was tipped off by an informant that a certain Aling Rosa Aruta will arrive from Baguio with large volume of marijuana with her via bus which the informant identified. Aruta descended from the bus, informant points finger at her and police asked if they could open her bag and check contents. They found it contained dried marijuana leaves and a bus ticket – such were brought to NARCOM office. Olongapo RTC convicted her in violation of DDA. Court ruled that it was NOT a reasonable search because there was no probable cause for search incidental to a lawful arrest.

Why the *Aruta* case does not fall under the other categories of valid warrantless search:

- (1) Not plain view; the confiscated item was inside the bag.
- (2) Not moving vehicle; she was in the middle of the street descending a parked bus.
- (3) Not stop and frisk; there was no way her actions could arouse suspicion that she was doing something illegal.
- (4) Not exigent or emergency circumstance; unlike *People v. De Gracia*, there is no general prevailing chaos that would render the courts inactive.
- (5) No waiver of right or consented search. Silence does not constitute waiver. Waiver of an unreasonable search and seizure is not presumed.

Comparison of *Aruta* to other cases

<i>Aruta (without probable cause)</i>	<i>Other cases (held that search was valid because there was probable cause)</i>
<ul style="list-style-type: none"> • Aruta was not acting suspiciously • Narcom had prior knowledge 	<i>People v. Tangiliban</i> <ul style="list-style-type: none"> • Conducted surveillance of Victory Bus Liner • Person was acting suspiciously • Bag was asked to be opened • On the spot tip was allowed
<ul style="list-style-type: none"> • Not suspicious • There was reasonable time to get warrant • She was just crossing the street 	<i>People v. Malmstedt</i> <ul style="list-style-type: none"> • Acted suspiciously • No reasonable time to get warrant • He was aboard moving vehicle
<ul style="list-style-type: none"> • Crossing the street, not moving vehicle 	<i>People v. Bagista</i> <ul style="list-style-type: none"> • Described exact appearance and when searched, it fitted the description • Moving vehicle and checkpoint
<ul style="list-style-type: none"> • No suspicious or illegal actions by Aruta 	<i>Manalili v. CA</i> <ul style="list-style-type: none"> • Surveillance of Kalookan Cemetery because druggies roam about • Chanced upon a person who appeared, based on officers' experience, were high on drugs

(2) Plain View Doctrine – things seized are within plain view of a searching party.

Requisites:

- Prior valid intrusion based on valid warrantless arrest in which the police are legally present in the pursuit of their official duties
- Evidence was inadvertently discovered by the police who had the right to be where they are
- Evidence must be immediately apparent
- "Plain view" justified mere seizure of evidence without further search [*People v. Aruta, supra; N.B. substantially the same as Nala v. Barroso requirements*]

An object is in "plain view" if the object itself is plainly exposed to sight. Where the seized object is inside a closed package, the object is not in plain view and, therefore, cannot be seized without a warrant. However, if the package proclaims its contents, whether by its

distinctive configuration, its transparency, or if its contents are obvious to an observer, then the content are in plain view, and may be seized. [*Caballes v. Court of Appeals (2002)*]

If the package is such that it contains prohibited articles, then the article is deemed in plain view. [*People v. Nuevasm (2007)*]

(3) Search of Moving Vehicles

Securing a search warrant is not practicable since the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. [*Papa v. Mago (1968)*]

"Stop and search" without a warrant at military or police checkpoints has been declared not to be illegal per se so long as it is required by exigencies of public order and conducted in a way least intrusive to motorists. [*Valmonte v. de Villa (1989)*]

For a mere routine inspection, the search is normally permissible when it is limited to a mere visual search, where the occupants are not subjected to physical or body search. On the other hand, when the vehicle is stopped and subjected to an extensive search, it would be constitutionally permissible only if the officers conducting the search had reasonable or probable cause to believe, before the search that either the motorist is a law offender or they will find the instrumentality or evidence pertaining to a crime in the vehicle to be searched. [*Caballes v. Court of Appeals* (2002); *People v. Libnao* (2003)]

(4) Valid Express Waiver Made Voluntarily And Intelligently

Requisites:

- (a) Must appear that right exists;
- (b) Person involved had actual/constructive knowledge of the existence of such right;
- (c) Said person had an actual interest to relinquish the right. [*Aruta, supra*]

In this case, mere failure to object to the search and seizure does not constitute a waiver.

Right to be secure from unreasonable search may be waived. Waiver may be express or implied. When one voluntarily submits to a search or consents to have it made of his person/premises, he is precluded from later complaining. [*People v. Kagui Malasugui* (1936)]

There is presumption against waiver by the courts. It is the State that has the burden of proving, by clear and convincing evidence, that the necessary consent was obtained and that it was voluntarily and freely given. [*Caballes v. Court of Appeals* (2002)]

When accused checked in his luggage as passenger of a plane, he agreed to the inspection of his luggage in

accordance with customs laws and regulations, and thus waived any objection to a warrantless search. [*People v. Gatward*, 267 SCRA 785]

(5) Customs Search

The police are allowed to conduct warrantless searches in behalf of the Department of Customs.

They are authorized to examine, open any box, trunk, or other containers where he has reasonable cause to believe that such items were hidden from customs search. [*People v. Mago* (1968)]

Sec. 2203 of the *Tariff and Customs Code* states that no warrant is required for police or authorized persons to pass, enter, search any land, enclosure, building, warehouse, vessels, aircrafts, vehicles but not dwelling.

Purpose of customs search: To verify whether or not Custom duties and taxes were paid for their importation.

(6) Stop And Frisk Searches

There should be a genuine reason to "stop-and-frisk in the light of the police officer's experience and surrounding conditions to warrant a belief that the person detained has weapons concealed. [*Malacat v. CA* (1997), citing *Terry v. Ohio*]

Police officer has a right to stop a citizen on street and pat him for a weapon in the interest of protecting himself from the person with whom he was dealing by making sure that he is not armed.

The right of an agent, to protect himself and others, to conduct a carefully limited search of outer clothing of such persons as listed below in an attempt to discover weapons which might be used to assault him. Such search is reasonable under the 4th amendment:

- (1) Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous;
- (2) Where in the course of the investigation of this behavior he identifies himself as a policeman and makes reasonable inquiries; and
- (3) Where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or other's safety. [*Terry v. Ohio*, 1968]

Test: WON a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger [*Terry v. Ohio* (1968)].

Guidelines of Stop and Frisk

[*Manalili v. CA*, 1997]

- (1) When police officer observes unusual conduct;
- (2) This conduct leads him to believe, also in light of his experience, that criminal activity may be afoot
- (3) The persons with whom he is dealing may be armed and presently dangerous
- (4) Also, in the course of investigating his behavior of the man, after identifying himself as

a police officer – the man is entitled to a limited search of outer clothing because:

- (a) Fear of his own safety
- (b) Fear of public's safety that a crime might ensue

The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in order to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons or contraband concealed about him [*People v. Sy Chua* (2003)].

(7) Exigent And Emergency Circumstances

The raid and seizure of firearms and ammunition at the height of the 1989 *coup d'état*, was held valid, considering the exigent and emergency situation. The military operatives had reasonable ground to believe that a crime was being committed, and they had no opportunity to apply for a search warrant from the courts because the latter were closed. Under such urgency and exigency, a search warrant could be validly dispensed with. [*People v. de Gracia*, 233 SCRA 716]

Summary of Requisites for Warrantless Searches

<i>Type</i>	<i>Requisites</i>
Incident to a Lawful Arrest [<i>Chimel v. CA</i>]	Arresting officer may search (a) The arrestee's person to (i) Discover or remove weapons and (ii) Seize evidence to prevent concealment or destruction; and (b) The area "within the immediate control" of the arrestee, i.e. area from which he might <i>gain</i> possession of a weapon or destructible evidence.
Plain View [<i>People v. Aruta</i>]	(a) Prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties (b) Evidence was inadvertently discovered by the police who had the right to be where they are (c) Evidence must be immediately apparent (d) "Plain view" justified mere seizure of evidence without further search
Vehicle Checkpoint [<i>Valmonte v. de Villa</i>]	(a) Vehicle is neither searched; nor its occupants subjected to a body search; and (b) Inspection of the vehicle is merely limited to a visual search.
Search of a Moving Vehicle [<i>Aniag v. COMELEC</i>]	Extensive search without a warrant valid only if the officers had reasonable or probable cause to believe before the search that (a) The motorist was a law offender; or (b) They would find the evidence of a crime in the vehicle.
Consented Search	(Requisites are those for Waiver of a Constitutional Right) (a) Right to be waived existed; (b) Person waiving it had actual or constructive knowledge of said right; (c) He had an actual intention to relinquish the right.
Stop and Frisk [<i>Terry v. Ohio, as cited in Manalili v. CA</i>]	(a) Police officer observes an unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous; (b) In the course of investigating this behavior, he identified himself as a policeman and makes reasonable inquiries; and (c) Nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or other's safety xxx

Properties Subject To Seizure

General Rule: Only the articles particularly described in the warrant may be seized.

- (1) Property subject of an offense
- (2) Stolen or embezzled property and other proceeds or fruits of an offense
- (3) Used or intended to be used as a means of committing an offense [Sec. 2 Rule 126, ROC]

Where the warrant authorized only the seizure of shabu, and not marijuana, the seizure of the latter was held unlawful. [*People v. Salangit*]

It is not necessary that the property to be searched or seized should be owned by the person against whom the warrant is issued; it is sufficient that the property is within his *control or possession*. [*Burgos v. Chief of Staff (1984)*]

Comparison of Procedures in Obtaining Search Warrants and Arrest Warrants

Rule 112, Sec. 6. When warrant of arrest may issue – (a) By the Regional Trial Court – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence (**Note:** This is not found in the procedure for a search warrant) within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

Rule 126, Sec. 4. Requisites for issuing search warrant – A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

D. WARRANTLESS ARRESTS

Requisites for Issuance of a Valid Arrest Warrant

What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause.

In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is *not* required to personally examine the complainant and his witnesses.

Following established doctrine and procedure, he shall:

- (1) Personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or
- (2) If he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. [*Beltran v. Makaslar (1988)*]

Existence of Probable Cause: Such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. [*Webb v. De Leon (1995)*]

Determination of probable cause personally by the judge as to warrant of arrest:

- (1) On the basis of the witnesses' personal knowledge of the facts they are testifying to.
- (2) The arrest warrant must describe particularly the person to be seized.
 - (a) By stating the name of the person to be arrested.
 - (b) If not known, then a "John Doe warrant" may be issued, with some *descriptio personae* that will enable the officer to identify the accused.

John Doe Warrant: Warrants issued against 50 John Does, none of whom the witnesses could identify, were considered as "general warrants" and thus void. [*Pangandaman v. Casar* (1988)]

Requisites of a Valid Warrantless Arrest

[Rule 113, Sec. 5, Rules on Criminal Procedure]

- (1) ***In flagrante delicto:*** When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense

The person must be arrested after the offense has been committed and in the presence of a police officer. [*People v. Mengote* (1992)]

Rebellion is a continuing offense. Therefore a rebel may be arrested without a warrant at any time of the day or the night as he is deemed to be in the act of committing rebellion. [*Umil v. Ramos* (1991)]

Though kidnapping with serious illegal detention is deemed a continuing crime, it can be considered as such only when the deprivation of liberty is persistent and continuing from one place to another. [*Parulan v. Dir. of Prisons* (1968)]

Buy-Bust: A buy-bust operation is a valid *in flagrante* arrest. The subsequent search of the person arrested and the premises within his immediate control is valid as an incident to a lawful arrest. [*People v. Hindoy* (2001)]

When not proper buy-bust: Instead of arresting the suspect after the sale in a buy-bust op, the officer returned to the police headquarters and filed his report. It was only in the evening that he, without warrant, arrested the suspect at his house where dried marijuana leaves were found and seized. This is unlawful arrest. [*People v. Rodriguez* (1992)]

- (2) **Hot Pursuit:** When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it

Requisites:

- (a) Offense had just been committed;

The person must be immediately arrested after the commission of the offense. [*People v. Manlulu* (1994)]

- (b) Person making the arrest has probable cause to believe based on personal knowledge.

Note: There must be a large measure of immediacy between the time the offense is committed and the time of the arrest. If there was an appreciable lapse of time between arrest and commission of crime, warrant of arrest must be secured. [*Nachura*]

Warrantless arrest of accused for selling marijuana 2 days after he escaped is invalid. [*People v. Kimura* (2004)]

The warrantless arrest only 3 hours after the killing was held valid since personal knowledge was established as to the fact of death and facts indicating that the accused killed the victim. [*People v. Gerente* (1993)]

Personal Knowledge: Experience of an officer which gives the idea that there is probable cause that the person caught is responsible. It has been ruled that "personal knowledge of facts" in arrests without a warrant must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. [*Cadua v. Court of Appeals* (1999)]

There is no personal knowledge when the commission of a crime and identity of the accused were merely furnished by an informant, or when the location of the firearm was given by the wife of the accused. It is not enough that there is reasonable ground to believe that the person to be arrested has committed a crime. That a crime has actually been committed is an essential precondition. [*People v. Burgos* (1986)]

- (c) **Escaped Prisoners:** When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another

Additional Exceptions (Not in the Rules):

- (d) **When the right is voluntarily waived (estoppel).**

Appellant is estopped from questioning the illegality of the arrest when he voluntarily submitted himself to the jurisdiction of the court by entering a plea of not guilty and by participating in the trial. [*People v. Salvatierra* (1997)]

Failure to raise the question of admissibility during the trial is waiver of the right to assert inadmissibility on appeal. [*Manalili v. CA* (1997)]

Scope of Waiver: Waiver is limited to the illegal arrest. It does not extend to

the search made as an incident thereto, or the subsequent seizure of evidence allegedly found during the search. [*People v. Peralta* (2004)]

(e) Violent insanity

E. ADMINISTRATIVE ARRESTS

General Rule: Only the judge has the power to issue a warrant after the proper procedure has been duly taken.

Exceptions:

- (1) In cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner of Immigration may order arrested, following a final order of deportation, for the purpose of deportation. [*Salazar v. Achacoso* (1990)]
- (2) Warrant of arrest may be issued by administrative authorities only for the purpose of carrying out a final finding of a violation of law and not for the sole purpose of investigation or prosecution. It may be issued only after the proceeding has taken place as when there is already a final decision of the administrative authorities.

F. DRUG, ALCOHOL AND BLOOD TESTS

The Court held that Randomized Drug Testing (RDT) for students and employees does not violate the right to privacy in the Constitution. Students do not have rational expectation of privacy since they are minors and the school is in loco parentis. Employees and students in universities, on the other hand, voluntarily subject themselves to the intrusion because of their contractual relation to the company or university.

But it is unconstitutional to subject criminals to RDT. Subjecting criminals to RDT would violate their right against self-incrimination.

It is also unconstitutional to subject public officials whose qualifications are provided for in the Constitution (e.g. members of Congress) to RDT. Subjecting them to RDT would amount to imposing an additional qualification not provided for in the Constitution. [*SJS v. Dangerous Drugs Board (2008)*]

VI. Privacy

Basis

The right to privacy, or the right to be let alone, was institutionalized in the 1987 Constitution as a facet of the right protected by the guarantee against unreasonable search and seizures. (But the Court acknowledged its existence as early as 1968 in *Morfe v. Mutuc.*)

The right to privacy exists independently of its identification with liberty; it is *in itself* fully deserving of constitutional protection. [*Disini v. Secretary of Justice (2014)*]

The right to privacy is bifurcated into two aspects:

(1) Decisional privacy—Liberty in the constitutional sense must mean more than freedom from unlawful governmental restraint; it must include privacy as well, if it is to be a repository of freedom. The right to be let alone is indeed the beginning of all freedom...The concept of liberty would be emasculated if it does not likewise compel respect for his personality as a unique individual whose claim to privacy and interference demands respect. [*Morfe v. Mutuc 22 SCRA 424 (1968)*]

(2) Informational privacy— the right of an individual not to have private information about himself disclosed; and the right of an individual to live freely without surveillance and intrusion. [*Whalen v. Roe 429 US 589, (1977)*]

Concept

Zones of privacy are recognized and protected in our laws. Within these zones, any form of intrusion is impermissible unless excused by law and in accordance with customary legal process. The meticulous regard we accord to these zones arises not only from our conviction that the right to privacy is a "constitutional right"

and "the right most valued by civilized men," but also from our adherence to the *Universal Declaration on Human Rights* which mandates that, "no one shall be subjected to arbitrary interference with his privacy" and "everyone has the right to the protection of the law against such interference or attacks."

Ople v. Torres (1998) has enumerated several provisions of the *Bill of Rights* where the right of privacy is enshrined (penumbras):

- (1) Sec. 3 – Privacy of communication
- (2) Sec. 1 – Life, liberty, and property
- (3) Sec. 2 – Unreasonable searches and seizures
- (4) Sec. 6 – Liberty of abode
- (5) Sec. 8 – Right to form associations
- (6) Sec. 17 – Right against self-incrimination

It has also indicated that zones of privacy are recognized and protected in our laws:

- (1) Civil Code
- (2) RPC
- (3) Anti-Wiretapping Law
- (4) Security Deposits Act
- (5) Intellectual Property Code

Privacy of Communications and Correspondence

- (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.
- (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. [Art. III, Sec. 3]

A. PRIVATE AND PUBLIC COMMUNICATIONS

Requisites of Existence of Privacy Right (Test of Reasonable Expectation Of Privacy)

- (a) **Subjective:** A person has exhibited an actual expectation of privacy; and
- (b) **Objective:** The expectation be one that society is prepared to recognize as reasonable. [*Pollo v. Constantino-David (2011)*]

B. INTRUSION, WHEN ALLOWED

- (1) By lawful order of the court

Probable cause in Sec. 2, Art. III should be followed for the court to allow intrusion. Particularity of description is needed for written correspondence, but if the intrusion is done through wire-taps and the like, there is no need to describe the content. However, identity of the person or persons whose communication is to be intercepted, and the offense or offenses sought to be prevented, and the period of the authorization given can be specified.

or

- (2) When public safety or public order requires otherwise, as may be provided by law.

In *Ayer Productions PTY. Ltd. v. Capulong (1988)* (hint: *Enrile* case), the right to be let alone is not an absolute right. A limited intrusion to a person's privacy has long been regarded as permissible where that person is a public figure and the information sought to be elicited from him or to be published about him constitute matters of public character. The interest sought to be protected by the right to privacy is the right to be free from unwarranted publicity, from the wrongful

publicizing of the private affairs and activities of an individual which are outside the realm of legitimate public concern.

Intrusion has to be based upon a non-judicial government official's assessment that public safety and order demands such intrusion, limited to the provisions of law. To hold otherwise would be to opt for a government of men, and not of laws.

Public order and safety – the security of human lives, liberty and property against the activities of invaders, insurrectionist and rebels. [1971 *Constitutional Convention*, Session of November 25, 1972]

Right of Privacy v. Freedom of Speech and Communication

Because of the preferred character of the constitutional rights of the freedom of speech and of expression, a weighty presumption of invalidity vitiates measures of prior restraint upon the exercise of such freedoms. [*Ayer v. Capulong, supra*]

Right of privacy of a public figure is necessarily narrower than that of an ordinary citizen. [*Ayer v. Capulong, supra*]

Public Figure – a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doing, his affairs and his character, has become public personage. Why?

- They had sought publicity and consented to it, so they could not complain.
- Their personalities and their affairs had already become public and could no longer be regarded as their own private business.
- The press had a privilege, under the constitution, to inform the public about those that have become legitimate matters of public interest.

But as held in *Lagunzad v. Soto* (1979), being a public figure does not automatically destroy in toto a person's right to privacy. In the case at bar, while it is true that the producer exerted efforts to present a true-to-life story of Moises Padilla, he admits that he induced a little romance in the film.

Right of Privacy v. Freedom of Access to Information

Kilusang Mayo Uno v. Director-General, NEDA (2006) stated that personal matters are exempt or outside the coverage of the people's right to information on matters of public concern. The data treated as "strictly confidential" under EO 420 being matters of public concern, these data cannot be released to the public or the press.

As compared with *Ople v. Torres* (1998), where the Court ruled that no constitutional infirmity on the right of privacy was shown by EO 420 which streamlines and harmonizes the existing ID system within each government agency. According to the Court, it even narrowly limits the data that can be collected, recorded, and shown as compared to AO 308 (*National ID System*) which was not narrowly drawn.

Two-part test to determine the reasonableness of person's expectation of privacy

- (1) Whether by his conduct, the individual has exhibited an expectation of privacy
- (2) Whether his expectation is one that society recognizes as reasonable

Note that factual circumstances of the case determine the reasonableness of the expectation. However, other factors such as customs, physical surroundings and practices of a particular activity, may serve to create or diminish this expectation. [*Ople v. Torres, supra*]

Forms of Correspondence Covered

- (1) Letters
- (2) Messages
- (3) Telephone calls
- (4) Telegrams, and the like [*Bernas*]

Other imports from Jurisprudence:

Anti-Wire Tapping Act (RA 4200), clearly and unequivocally makes it illegal for any person, not authorized by all the parties to any private communication, to secretly record such communications by means of a tape recorder. The law does not make any distinction. [*Ramirez v. Court of Appeals*, 248 SCRA 590]

An extension telephone is not among the devices enumerated in *Sec.1 of RA 4200*. There must be either a physical interruption through a wiretap or the deliberate installation of a device or arrangement in order to overhear, intercept, or record the spoken words. The telephone extension in this case was not installed for that purpose. It just happened to be there for ordinary office use. [*Ganaan v. IAC (1986)*]

E.O. 424 (s. 2005), adopting a unified multi-purpose ID system for government, does not violate the right to privacy because it (1) narrowly limits the data that can be collected, recorded, and released compared to existing ID systems, and (2) provides safeguards to protect the confidentiality of the data collected. [*KMU v. Director-General*, (2006)]

An intrusion into the privacy of workplaces is valid if it conforms to the **standard of**

reasonableness. Under this standard, both inception and scope of intrusion must be reasonable.

(1) Justified at **inception**: if there are reasonable grounds for suspecting that it will turn up evidence that the employee is guilty of work-related misconduct.

(2) **Scope of intrusion** is reasonable: if measures used in the search are reasonable related to the search's objectives, and it is not highly intrusive. [*Pollo, supra*]

Right may be invoked against the wife who went to the clinic of her husband and there took documents consisting of private communications between her husband and his alleged paramour. [*Zulueta v. Court of Appeals (1996)*]

N.B. While *Zulueta* seems to be an exception to the State Action Requirement, *Zulueta's* application of the exclusionary rule has only been cited once but to a *state* action.

See also: *R.A. No. 10173, Data Privacy Act (2012)*

Exclusionary rule

Any evidence obtained in violation of *Article III, Section 3* (right to privacy of communications and correspondence) or *Section 2* (right against unlawful search and seizures) shall be inadmissible for any purpose in any proceeding. This applies not only to testimonial evidence but also to documentary and object evidence.

C. WRIT OF HABEAS DATA

<i>Query</i>	<i>Habeas Data</i>
What is the writ of habeas data?	<ul style="list-style-type: none"> (1) Remedy (2) Available to any person (3) Whose right to life, liberty, and security has been violated or is threatened with violation (4) By an unlawful act or omission (5) Of a public official or employee, or of a private individual or entity (6) Engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.
What is its function?	To inquire into all manner of involuntary restraint as distinguished from voluntary and to relieve a person if such restraint is illegal.
When available?	<ul style="list-style-type: none"> (1) In cases of illegal detention or restraint; (2) In custody cases (even for a corpse) <p>Primary requisite for its availability is actual deprivation of right of custody</p>
What rule governs petitions for and the issuance of a writ of habeas data?	The <i>Rule on the Writ of Habeas Data</i> (A.M. No. 08-1-16-SC), which was approved by the SC on 22 January 2008. That Rule shall not diminish, increase or modify substantive rights.
What is the SC's basis in issuing the Rule?	<i>Constitution, Art. VIII, Sec. 5[5]</i>
When does the Rule take effect?	The Rule takes effect on 2 February 2008, following its publication in three (3) newspapers of general circulation.
Who may file a petition for the issuance of a writ of habeas data?	<ul style="list-style-type: none"> (1) The aggrieved party. (2) However, in cases of extralegal killings and enforced disappearances, the petition may be filed by <ul style="list-style-type: none"> (a) Any member of the immediate family of the aggrieved party, namely: the spouse, children and parents; or (b) Any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph.
Where can the petition be filed?	<ul style="list-style-type: none"> (1) Regional Trial Court <ul style="list-style-type: none"> (a) Where the petitioner or respondent resides, or (b) That which has jurisdiction over the place where the data or information is gathered, collected or stored, <i>at the option of the petitioner.</i> (2) Supreme Court, Court of Appeals, Sandiganbayan – when the action concerns public data files of government offices.
Instead of having the hearing in open court, can it be done in chambers?	Yes. It can be done when the respondent invokes the defense that the release of the data or information in question shall compromise national security or state secrets, or when the data or information cannot be divulged to the public due to its nature or privileged character.

The right to informational privacy, as a specific component of the right to privacy, may yield to an overriding legitimate state interest. [*Gamboa v. Chan* (2012)]

VII. Freedom of Expression

A. NATURE AND SCOPE

The primacy and high esteem accorded freedom of expression is a fundamental postulate of our constitutional system. This right was elevated to constitutional status [...] reflecting our own lesson of history, both political and legal, that freedom of speech is an indispensable condition for nearly every other form of freedom.

The scope of freedom of expression is so broad that it extends protection to nearly all forms of communication. It protects speech, print and assembly regarding secular as well as political causes, and is not confined to any particular field of human interest. The protection covers myriad matters of public interest or concern embracing all issues, about which information is needed or appropriate, so as to enable members of society to cope with the exigencies of their period. [Chavez v. Gonzales (2008)]

Speech, expression, and press include:

- (1) Written or spoken words (recorded or not)
- (2) Symbolic speech (e.g. wearing armbands as symbol of protest)

But violation of the Hotel's Grooming Standards by labor union members constitutes illegal strike and therefore an unprotected speech. [NUWHRAIN-APL-IUF Dusit Hotel Nikko Chapter v. CA (2008)]

- (3) Movies

Any and all modes of protection are embraced in the guaranty. It is reinforced by Sec. 18(1), Art. 3.

Basis

Art. III, Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Art. III, Sec. 18(1). No person shall be detained solely by reason of his political beliefs and aspirations.

All are indispensable to the "uninhibited, robust and wide-open debate in the free marketplace of ideas." [Abrams v. US (1919)]

While indeed, the news item subject of the present case might have ruffled the sensitivities of plaintiff, this Court however believes that the alleged defamatory articles fall within the purview of a qualifiedly privileged matter, and that therefore, it cannot be presumed to be malicious. The onus of proving malice is accordingly shifted to the plaintiff, that is, that he must prove that the defendants were actuated by ill-will in what they caused to be printed and published, with a design to carelessly or wantonly injure the plaintiff. [U.S. v. Bustos (1909)]

A.1 PRIOR RESTRAINT

Prior restraint – refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. They carry a heavy presumption of unconstitutionality but not all prior restraints are invalid. [Newsounds Broadcasting Network v. Dy (2009)]

Censorship conditions the exercise of freedom of expression upon the prior approval of the government. The censor serves therefore as the political, moral, social and artistic arbiter for the people, usually applying only his own subjective standards in determining what is good and what is not.

General rules:

- (1) Any system of prior restraints of expression comes to the Court bearing a heavy **presumption against its constitutionality**, giving the government a heavy burden to show justification for the imposition of such restraint. [*New York v. United States* 1971]
- (2) **There need not be total suppression.** Even restriction of circulation constitutes censorship. [*Grosjean v. American Press Co.*, 297 US 233]

Examples of Unconstitutional Prior Restraint

- (1) COMELEC prohibition against radio commentators or newspaper columnists from commenting on the issues involved in a scheduled plebiscite [*Sanidad v. COMELEC* (1990)]
- (2) Arbitrary closure of a radio station [*Eastern Broadcasting v. Dans* (1985)]; or even when there is a legal justification, such as lack of mayor's permit [*Newsounds Broadcasting Network Inc. v. Dy* (2009)]
- (3) COMELEC resolution prohibiting the posting of decals and stickers in mobile units like cars and other moving vehicles [*Adiong v. COMELEC* (1992)]
- (4) Search, padlocking and sealing of the offices of newspaper publishers (We Forum) by military authorities [*Burgos v. Chief of Staff, supra*]
- (5) An announcement of a public figure to prohibit the media to issue a specific kind of statement [*Chavez v. Gonzales* (2006)]

Examples of Constitutional Prior Restraint:

- (1) **Law which prohibits**, except during the prescribed election period, the making of speeches, announcements or commentaries for or against the

election of any candidate for office [*Gonzales v. COMELEC* (1969)]

- (2) Prohibition on any person making use of the media to sell or to give free of charge print space or air time for campaign or other political purposes except to the COMELEC. **Ratio:** police power of State to regulate media for purpose of ensuring equal opportunity, time and space for political campaigns. [*National Press Club v. COMELEC* (1992); *Osmeña v. COMELEC*]
- (3) Movie censorship: The power of the MTCRB can be exercised only for purposes of *reasonable* classification, not censorship. [*Nachura, citing Gonzalez v. Katigbak* (1985) and *Ayer v. Judge Capulong*]
- (4) *Near v. Minnesota*, (1931):
 - (a) When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right
 - (b) Actual obstruction to the government's recruiting service or the publication of the sailing dates of transports or the number and location of troops
 - (c) Obscene publications
 - (d) Incitements to acts of violence and the overthrow by force of orderly government

A.2 SUBSEQUENT PUNISHMENT

Freedom of speech includes freedom after speech. Without this assurance, the citizen would **hesitate to speak for fear he might be provoking the vengeance of the officials he has criticized** (**chilling effect**).

If criticism **is not to be conditioned on the government's consent**, then neither should **it be subject to the government's subsequent chastisement**.

Examples of Valid Subsequent Restraints:

- (1) Libel. Every defamatory imputation is presumed to be malicious. [*Alonzo v. CA* (1995)]

Exceptions:

- (a) Private communication in the performance of any legal, moral or social duty
 - (b) Fair and true report of any judicial, legislative or other official proceedings
- (2) Obscenity. The determination of what is obscene is a judicial function. [*Pita v. CA* (1989)]
- (3) Contempt for criticism/publications tending to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding (*sub judice*) [*People v. Alarcon* (1939)]
- (4) Imputation of irregularities in the judiciary must strike a balance between the right to free press and the reputation of judges. A reporter is prohibited from recklessly disregarding a private reputation without any bona fide effort to ascertain the truth thereof [*In Re: Jurado* (1995)]
- (5) Right of students to free speech in school premises must not infringe on the school's right to discipline its students [*Miriam College Foundation v. CA* (2000)]

Exceptions:

- (a) Fair comment on matters of public interest. **Fair comment** is that which is true or, if false, expresses the real opinion of the author based upon reasonable degree of care and on reasonable grounds.
- (b) Criticism of official conduct is given the widest latitude. [*US v. Bustos* (1918)]

Unprotected Speech

Slander or libel, lewd and obscene speech, as well as "fighting words" are not entitled to constitutional protection and may be penalized. [*Chavez v. Gonzales* (2008)]

B. CONTENT-BASED AND CONTENT-NEUTRAL REGULATIONS

	<i>Content-Based</i>	<i>Content-Neutral</i>
<i>Definition</i>	Regulation of the subject matter of the utterance or speech	Regulations of the incidents of speech – time, place and manner
<i>Standard of Review</i>	Strictest scrutiny	Intermediate approach

B.1 CONTENT-BASED RESTRICTIONS

The regulation is based on the subject matter of the utterance or speech. It merely controls time, place, or manner, under well-defined standards. [*Newsounds Broadcasting v. Dy* (2009)]

A governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny in light of its inherent and invasive impact. [*Chavez v. Gonzales* (2008)]

Freedom of Expression and National Security

Where a fictitious suicide photo and letter were published in newspapers of general circulation expressing disappointments of the Roxas administration and instructing fictitious wife to teach their children to burn pictures of the President, SC held that such act constitutes inciting to sedition.

It suggests or incites rebellious conspiracies or riots and tends to stir up the people against the constituted authorities, or to

provoke violence from opposition groups who may seek to silence the writer, which is the sum and substance of the offense under consideration. [*Espuelas v. People* (1951)]

Freedom of Expression and Libel

Libel is not a constitutionally protected speech and that the government has an obligation to protect private individuals from defamation. [*Disini v. Sec. of Justice* (2014)]

National community standard as basis of what is defamatory

Not belonging to a royal house does not constitute libel. In a community like ours which is both republican and egalitarian, such an ascription, whether correct or not, cannot be defamatory. It is to the standards of the national community, not to those of the region that a court must refer especially where a newspaper is national in reach and coverage. [*Bulletin Publishing v. Noel* (1988)]

Report of official conduct is privileged and covered by press freedom

Where the defamation is alleged to have been directed at a group/class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be. [*Newsweek v. IAC* (1986)]

Group Libel

As the size of these groups increases, the chances for members of such groups to recover damages on tortious libel become elusive. This principle is said to embrace two important public policies:

- (1) Where the group referred to is large, the courts presume that no reasonable

reader would take the statements as so literally applying to each individual member; and

- (2) The limitation on liability would satisfactorily safeguard freedom of speech and expression, as well as of the press, effecting a sound compromise between the conflicting fundamental interests involved in libel cases. [*MVRS v. Islamic Da'Wah Council of the Phil* (2003)]

Actual Malice Standard for Public Officials and Matters of Public Interest

Even if the defamatory statement is false, no liability can attach if it relates to official conduct, unless the public official concerned proves that the statement was made with **actual malice** — that is, with knowledge that it was false or with reckless disregard of whether it was false or not. [*Vasquez v. CA* (1999) citing *New York Times v. Sullivan* (1964)]

SC Administrative Circular No. 08-2008 implements a rule of preference for the imposition of fine only rather than imprisonment in libel suits.

Freedom of Expression and the Right to Privacy

Being a public figure does not automatically destroy *in toto* a person's right to privacy. The right to invade a person's privacy to disseminate public info does not extend to a fictional representation of a person, no matter how public a figure he/she may be. [*Lagunzad v. Soto* (1979)]

Freedom of speech and expression includes freedom to film and produce motion pictures and to exhibit them. The fact that such film production is a commercial activity is not a disqualification for availing of freedom of speech and expression.

The right to privacy cannot be invoked to resist publication and dissemination of matter of public interest. The intrusion is no more than necessary to keep the film a

truthful historical account. Enrile is a public figure because of his participation as a principal actor in the culminating events of the EDSA revolution. [*Ayer Productions v. Capulong* (1988)]

Freedom of Expression and the Administration of Justice

Due to the delay in the disposition of his original case, Cabansag asked for help from the President through a letter addressed to the Presidential Complaints and Actions Commission (PCAC). He was charged for contempt because such complaint should have been raised to the Secretary of Justice or SC instead.

SC ruled that for his act to be contemptuous, the danger must cause a serious imminent threat to the administration of justice. It cannot be inferred that such act has "a dangerous tendency" to belittle the court or undermine the administration of justice for the writer merely exercised his constitutional right to petition the government for redress of a legitimate grievance. [*Cabansag v. Fernandez* (1957)]

Freedom of Expression and Obscenity

Determination: Community standard

Pictures depicting native inhabitants in their native dresses as they appear and live in their native homelands are not obscene or indecent. The pictures in question merely depict persons as they actually live, without attempted presentation of persons in unusual postures or dress. The aggregate judgment of the Philippine community, the moral sense of all the people in the Philippines, would not be shocked by photographs of this type. [*People v. Kottinger* (1923)]

A hula-hula dance portraying a life of a widow who lost her guerrilla husband cannot be considered protected speech if the audience, about a hundred customers, were howling and shouting, "*sige muna, sige nakakalibog*" (go ahead first, go ahead,

it is erotic), during the performance. [*People v. Aparici* (Court of Appeals 1955)]

B.2 CONTENT-NEUTRAL RESTRICTIONS

Regulations on the incidents of speech — time, place and manner — under well-defined standards. [*Newsounds, supra*]

When the speech restraints take the form of a **content-neutral regulation**, only a substantial governmental interest is required for its validity. Because regulations of this type are not designed to suppress any particular message, they are not subject to the strictest form of judicial scrutiny but an **intermediate approach** — somewhere between the mere rationality that is required of any other law and the compelling interest standard applied to content-based restrictions. [*Chavez v. Gonzales* (2008)]

Content-Neutral (US v. O'Brien) test – A government regulation is sufficiently justified if:

- (1) It is **within the constitutional power;**
- (2) It **furtheres an important or substantial government interest;**
- (3) The **government interest is unrelated to the suppression of free expression;**
- (4) The **incident restriction is no greater than essential to the furtherance of that interest.**

Freedom of Assembly

The right to freedom of speech and to peaceably assemble, and petition the government for redress of grievances are fundamental personal rights of the people guaranteed by the constitutions of democratic countries. City or town mayors are not conferred the power to refuse to grant the permit, but only the discretion in issuing the permit to determine or specify the streets or public places where the parade may pass or the meeting may be held. [*Primicias v. Fugoso* (1948)]

Absent any clear and present danger of a substantive evil, peaceable assembly in public places like streets or parks cannot be denied. [*J.B.L. Reyes v. Bagatsing* (1983)]

The Calibrated Pre-emptive Response (CPR), insofar as it would purport to differ from or be in lieu of maximum tolerance, is null and void. CPR serves no valid purpose if it means the same thing as maximum tolerance [Sec. 3 [c] of B.P. 880], and is illegal if it means something else. Accordingly, what is to be followed is and should be that mandated by the law itself, namely, maximum tolerance. [*Bayan v. Ermita* (2007)]

B.P. 880 not unconstitutional

B.P. No. 880 is not an absolute ban of public assemblies but a restriction that simply regulates the time, place and manner of the assemblies. The law is not vague or overbroad. There is, likewise, no prior restraint, since the content of the speech is not relevant to the regulation. A fair and impartial reading of B.P. No. 880 thus readily shows that it refers to all kinds of public assemblies that would use public places. [*Bayan v. Ermita, supra*]

Freedom Parks

B.P. 880 provides that every city and municipality must set aside a freedom park within six months from the law's effectivity in 1985. Section 15 of the law provides for an alternative forum through the creation of freedom parks where no prior permit is needed for peaceful assembly and petition at any time. Without such alternative forum, to deny the permit would in effect be to deny the right to peaceably assemble. [*Bayan v. Ermita, supra*]

Permit Application

There is a need to address the situation adverted to by petitioners where mayors do not act on applications for a permit and when the police demand a permit and the

rallyists could not produce one, the rally is immediately dispersed. [*Bayan v. Ermita, supra*]

In such a situation, as a necessary consequence and part of maximum tolerance, rallyists who can show the police an application duly filed on a given date can, after two (2) days from said date, rally in accordance with their application without the need to show a permit, the grant of the permit being then presumed under the law, and it will be the burden of the authorities to show that there has been a denial of the application, in which case the rally may be peacefully dispersed following the procedure of maximum tolerance prescribed by the law. [*Bayan v. Ermita, supra*]

C. FACIAL CHALLENGES AND THE OVERBREADTH DOCTRINE

General Rule: A party can question the validity of a statute only if, as applied to him, it is unconstitutional. [*Southern Hemisphere v. Anti-Terrorism Council* (2010)]

Exception: Facial Challenges

C.1 FACIAL CHALLENGES

A facial challenge is allowed to be made to a vague statute and to one which is overbroad because of possible "chilling effect" upon protected speech. The theory is that "[w]hen statutes regulate or proscribe speech and no readily apparent construction suggests itself as a vehicle for rehabilitating the statutes in a single prosecution, the transcendent value to all society of constitutionally protected expression is deemed to justify allowing attacks on overly broad statutes with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with narrow specificity."

The possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that the

protected speech of others may be deterred and perceived grievances left to fester because of possible inhibitory effects of overly broad statutes.

This rationale does not apply to penal statutes (without a free-speech aspect). Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech. [*Southern Hemisphere*, supra]

However, said doctrines apply to penal statutes when

(1) The statute is challenged as applied; or

(2) The statute involves free speech [*Disini v. Sec. of Justice* (2014)]

C.2 OVERBREADTH DOCTRINE

A governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

A plain reading of *PP 1017* shows that it is not primarily directed to speech, rather it covers a spectrum of conduct. It is a call upon the AFP to prevent or suppress all forms of lawless violence. Facial challenge on the ground of overbreadth is a very strong medicine. Petitioners did not show that there is no instance when *PP1017* may be valid. [*David vs. Arroyo* (2006)]

D. TESTS

Test	Definition
Dangerous Tendency Doctrine	Limitations on speech are permissible once a rational connection has been established between the speech restrained and the danger contemplated.
Balancing of Interests Test [<i>Soriano v. Laguardia</i>]	When particular conduct is regulated for public order, and the regulation results in an indirect abridgment of speech, the court must determine which of the two conflicting interests demand greater protection. Factors to consider: (1) Social value of the freedom restricted; (2) Specific thrust of the restriction, i.e. direct or indirect, affects many or few; (3) Value of the public interest sought to be secured by the regulation; (4) Whether the restriction is reasonably appropriate and necessary for the protection of the public interest; (5) Whether the necessary safeguarding of the public interest may be achieved by a measure less restrictive of the protected freedom.
Clear and Present Danger Rule	Speech may be restrained because there is a substantial danger that the speech will likely lead to an evil the government has a right to prevent. Requires that the evil consequences sought to be prevented must be substantive, "extremely serious and the degree of imminence extremely high."

D.1 DANGEROUS TENDENCY TEST

If the words uttered create a dangerous tendency of an evil which the State has the right to prevent, then such words are punishable. [*Cabansag v. Fernandez* (1957)]

It is sufficient if the natural tendency and the probable effect of the utterance were to bring about the substantive evil that the legislative body seeks to prevent. [*People v. Perez* (1956)]

D.2 CLEAR AND PRESENT DANGER TEST

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. [*Schenck v. United States* (1919)]

This rule requires that "the danger created must not only be clear and present but also traceable to the ideas expressed". [*Gonzales v. COMELEC* (1969)]

Note: This test has been adopted by the Philippine SC lock, stock and barrel and is the test most applied to cases re: freedom of expression.

D.3 BALANCING OF INTEREST TEST

When a particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional and partial abridgement of speech, the duty of the courts is to determine which of the two conflicting interests demands greater protection. [*American Communications Assoc. v. Douds*, 339 US 282]

The test is applied when two legitimate values not involving national security crimes compete. [*Gonzales v. COMELEC* (1969)]

D.4 DIRECT INCITEMENT TEST

The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. [*Brandenburg v. Ohio* (395 U.S. 444)]

It is incumbent on the court to make clear in some fashion that the advocacy must be of action and not merely of abstract doctrine. [*Yates v. US* (1957)]

Political discussion even among those opposed to the present administration is

within the protective clause of freedom of speech and expression. The same cannot be construed as subversive activities per se or as evidence of membership in a subversive organization. [*Salonga v. Cruz Paño* (1986)]

D.5 INTERMEDIATE REVIEW

Applied to content-neutral regulations, the test has been formulated in this manner: A governmental regulation is sufficiently justified

- (1) if it is within the constitutional power of the Government;
- (2) if it furthers an important or substantial governmental interest;
- (3) if the governmental interest is unrelated to the suppression of free expression; and
- (4) if the incident restriction on alleged [freedom of speech & expression] is no greater than is essential to the furtherance of that interest. [*Chavez v. Gonzales* (2008)]

D.6 GRAVE-BUT-IMPROBABLE DANGER TEST

To determine the clear and present danger of the utterances bringing about the evil which that legislature has the power to punish, "In each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." In this case, an attempt to overthrow the Government by force is a sufficient evil for Congress to prevent. It is the existence of the conspiracy which creates the danger. [*Dennis v. US* (1951)]

D.7 MILLER TEST

To determine obscenity:

- (1) Whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to prurient interest

- (2) Whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law
- (3) Whether the work, taken as a whole, lacks serious, literary, artistic, political, or scientific value [*Miller v. CA (1973)* also applied in *Fernando v. CA (2006)*]

D.8 TEST FOR CONTENT-NEUTRAL REGULATION

O' Brien Test – content-neutral regulation is valid:

- (1) If it is within the constitutional power of the government
- (2) If it furthers an important or substantial government interest
- (3) If the government interest is unrelated to the suppression of free expression
- (4) If the incidental restriction is no greater than is essential to the furtherance of that interest

COMELEC banned the publication of surveys 15 and 7 days prior to election concerning national and local candidates, respectively. The SC held that this regulation is content-based because applying the third prong of the O'Brien Test, it actually suppresses a whole class of expression, while allowing the expression of opinion concerning the same subject matter by other opinion takers. The prohibition may be for a limited time, but the curtailment of the right of expression is direct, absolute, and substantial. [*SWS v. COMELEC (2001)*]

E. STATE REGULATION OF DIFFERENT TYPES OF MASS MEDIA

Art. XVI, Sec. 11(1). The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

Only Filipino citizens or corporations or associations at least seventy per centum of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

The Court pronounced that the freedom of broadcast media is lesser in scope than the press because of their pervasive presence in the lives of people and because of their accessibility to children.

Movie Censorship

When MTRCB rated the movie, "*Kapit sa Patalim*" as fit "For Adults Only", SC ruled that there was no grave abuse of discretion.

Censorship is allowable only under the clearest proof of a clear and present danger of a substantive evil to public safety, morals,

health or any other legitimate public interest:

- (1) There should be no doubt what is feared may be traced to the expression complained of.
- (2) Also, there must be reasonable apprehension about its imminence. It does not suffice that the danger is only probable. [*Gonzales v. Kalaw-Katigbak* (1985)]

Limited intrusion into a person's privacy is permissible when that person is a public figure and the information sought to be published is of a public character.

What is protected is the right to be free from unwarranted publicity, from the wrongful publicizing of the private affairs of an individual which are outside the realm of public concern. [*Ayer Productions v. Capulong, supra*]

Television Censorship

P.D. 1986 gave MTRCB the power to screen, review and examine all television programs.

By the clear terms of the law, the Board has the power to "approve, delete, or prohibit the exhibition and/or television broadcasts of television programs. The law also directs the Board to apply contemporary Filipino culture values as standard to determine those which are objectionable for being immoral, indecent, contrary to law and/or good customs injurious to the prestige of the Republic of the Philippines and its people, or with a dangerous tendency to encourage the commission of a violence or of a wrong or a crime.

The law gives the Board the power to screen, review and examine all "television programs" whether religious, public affairs, news documentary, etc. (When the law does not make any exception, courts may not exempt something therefrom). [*Iglesia ni Cristo v. CA* (1996)]

Also, notwithstanding the fact that freedom of religion has been accorded a preferred status, *Iglesia ni Cristo's* program is still not

exempt from MTRCB's power to review. Freedom of expression and of the press has not been declared of preferred status. [*MTRCB v. ABS-CBN* (2005)]

On the program of *Dating Daan*, Soriano made crude remarks like "*lihitimong anak ng demonyo, sinungaling*, etc." MTRCB preventively suspended him and his show. SC held that the State has a compelling interest to protect the minds of the children who are exposed to such materials. [*Soriano v. Laguardia* (2009)]

The SC could not compel TV stations and radio stations, being indispensable parties, to give UNIDO free air time as they were not impleaded in this case. UNIDO must seek a contract with these TV stations and radio stations at its own expense. [*UNIDO v. COMELEC* (1981)]

The television camera is a powerful weapon which intentionally or inadvertently can destroy an accused and his case in the eyes of the public.

Considering the prejudice it poses to the defendant's right to due process as well as to the fair and orderly administration of justice, and considering further that the freedom of the press and the right of the people to information may be served and satisfied by less distracting, degrading and prejudicial means, live radio and television coverage of the court proceedings shall not be allowed. No video shots or photographs shall be permitted during the trial proper. Video footages of court hearings for news purposes shall be limited and restricted. [*Secretary of Justice v. Sandiganbayan* (2001)]

Regardless of the regulatory schemes that broadcast media is subjected to, the Court has consistently held that the clear and present danger test applies to content-based restrictions on media, without making a distinction as to traditional print or broadcast media. [*Chavez v. Gonzales* (2008)]

Radio Censorship

The SC does not uphold claim that Far Eastern had no right to require the submission of the manuscript. It is the duty of Far Eastern to require the submission of a manuscript as a requirement in broadcasting speeches. Besides, laws provide for such actions:

- (1) *Act 8130*. Franchise for Far Eastern; radio to be open to the general public but subject to regulations
- (2) *Comm. Act 98*. Sec. of Interior and/or the Radio Board is empowered to censor what is considered "neither moral, educational or entertaining, and prejudicial to public interest." The Board can forfeit the license of a broadcasting station.
- (3) *Sec. of the Interior, Dept. Order 13*. Requires submission of daily reports to Sec. of Interior/Radio Board re: programs before airing. For speeches, a manuscript or short gist must be submitted. [*Santiago v. Far Eastern Broadcasting* (1941)]

Strict rules have also been allowed for radio because of its pervasive quality and because of the interest in the protection of children. [*FCC v. Pacifica Foundation* (1978)]

F. COMMERCIAL SPEECH

Commercial speech is protected speech although commercial advertising in the U.S. has not been accorded the same level of protection given to political speech. One case set down the **requirements for protection of commercial speech**:

- (a) Speech must not be false, misleading or proposing an illegal activity;
- (b) Government interest sought to be served by regulation must be substantial;
- (c) The regulation must advance government interest; and
- (d) The regulation must not be overbroad. [*Bernas*]

G. PRIVATE VERSUS GOVERNMENT SPEECH

Parliamentary immunity guarantees the members the freedom of expression without fear of being made responsible in criminal or civil actions before courts or forum outside of Congress. But this does not protect them from responsibility from the legislative body. The members may nevertheless be questioned in Congress itself.

For unparliamentary conduct, members of the Congress have been, or could be censured, committed to prison, even expelled by the votes of their colleagues. [*Osmeña v. Pendatun* (1960)]

But a libelous letter of a congressman, published on a newspaper, does not fall under "speech or debate" protected by the Constitution. Speech or debate refers to speeches/statements/votes made within Congress while it is in session, or duly authorized actions of congressmen in the discharge of their duties. [See *Jimenez v. Cabangbang* (1966)]

H. HECKLER'S VETO

Heckler's veto – an attempt to limit unpopular speech.

For example, an unpopular group wants to hold a rally and asks for a permit. The government is not allowed to refuse the permit based upon the beliefs of the applicants. But the government can deny the permit, reasoning that it is not because the government disapproves of the group's message, it is just afraid that so many people will be outraged that there might be violent protests. Under the Free Speech Clause of *Sec. 4, Art III*, the government may not silence speech based on the reaction (or anticipated reaction) of a hostile audience, unless there is a "clear and present danger" of grave and imminent harm, which is not easy to prove.

VIII. Freedom of Religion

Art. III, Sec. 5. No law shall be made respecting an establishment of religion; or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Religion – reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character and of obedience to his will. [*David v. Beason*]

Religion is expanded to non-theistic beliefs such as Buddhism or Taoism. [*Torasco v. Watkins*]

Four-creed criteria to qualify as religion

- (1) There must be belief in God or some parallel belief that occupies a central place in the believer's life.
- (2) The religion must involve a moral code transcending individual belief (can't be purely subjective).
- (3) Demonstrable sincerity in belief is necessary but the court must not inquire into the truth or reasonableness of the belief.
- (4) There must be associational ties. [*U.S. v. Seager*]

A. NON-ESTABLISHMENT CLAUSE

A.1 CONCEPT

The clause prohibits excessive government entanglement with, endorsement or disapproval of religion. [*Victoriano v. Elizalde Rope Workers Union (1974)*]

A.2 BASIS

"[T]he principle of separation of Church and State is based on mutual respect. Generally, the State cannot meddle in the internal affairs of the church, much less question its faith and dogmas or dictate upon it. It cannot favor one religion and discriminate against another. On the other hand, the church cannot impose its beliefs and convictions on the State and the rest of the citizenry. It cannot demand that the nation follow its beliefs, even if it sincerely believes that they are good for the country." [*Imbong v. Ochoa (2014)*, on the constitutionality of the RH Law]

Rooted in the separation of Church and State. Relevant provisions of the Constitution:

- (1) *Art. II, Sec. 6*: "The separation of Church and State shall be inviolable."
- (2) *Art. IX-C, Sec. 2(5)*: "Religious denominations and sects shall not be registered [as political parties]."
- (3) *Art. VI, Sec. 5(2)*: "For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from [...] sectors as may be provided by law, except the religious sector."
- (4) *Art. VI, Sec. 29(2)*: "No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium."

A.3 ACTS NOT PERMITTED BY NON-ESTABLISHMENT CLAUSE

- (1) Prayer and Bible-reading in public schools [*Abington School District v. Schemp* (1963)]
- (2) Financial subsidy for parochial schools [*Lemon v. Kurtzman* (1971)]
- (3) Religious displays in public spaces: Display of granite monument of 10 commandments in front of a courthouse is unconstitutional for being unmistakably non-secular. [*Glassroth vs. Moore*, 335 F.3d 1282 (11th Cir. 2003)]
- (4) Mandatory religious subjects or prohibition of secular subjects (evolution) in schools [*Epperson v. Arkansas* (1968)]
- (5) Mandatory bible reading in school (a form of preference for belief over non-belief) [*School District v. Schempp* (1963)]
- (6) Word "God" in the Pledge of Allegiance: religious vs. atheist students [*Newdow v. US* (2003)]

A.4 ACTS PERMITTED BY NON-ESTABLISHMENT CLAUSE

Constitutionally created

- (1) Tax exemption

Art. VI, Sec. 28 (3). Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

- (2) Operation of sectarian schools

Art. XIV, Sec. 4(2). Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or

corporations or associations at least sixty per centum of the capital of which is owned by such citizens...

- (3) Religious instruction in public schools

Art. XIV, Sec. 3(3). At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.

- (4) Limited public aid to religion

Art. VI, Sec. 29(2). No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

Jurisprudence

- (1) Religious activities with secular purpose/character. – Postage stamps depicting Philippines as the site of a significant religious event – promotes Philippine tourism. [*Aglipay v. Ruiz*, (64 Phil. 201)]
- (2) Government sponsorship of town fiestas. – has secular character [*Carces v. Estenzo* (1981)]
- (3) Book lending program for students in parochial schools. – benefit to parents and students [*Board of Education v. Allen*, 392 U.S. 236]
- (4) Display of *crèche* in a secular setting – depicts origins of the holiday [*Lynch v. Donnelly* (1984)]

- (5) Financial support for secular academic facilities (i.e. library and science center) in parochial schools – has secular use [*Tilton v. Richardson* (403 U.S. 672)]
- (6) Exemption from zoning requirements to accommodate unique architectural features of religious buildings i.e. Mormon's tall pointed steeple [*Martin v. Corporation of the Presiding Bishop* (434 Mass. 141)]

A.5 TWO STANDARDS USED IN DECIDING RELIGION CLAUSE CASES

- (1) **Separation** – protects the principle of church-separation with a rigid reading of the principle
 - (a) Strict Separation
 - The wall of separation is meant to protect the state from the church
 - There is an absolute barrier to formal interdependence of religion and state
 - There is hostility between the two
 - (b) Strict Neutrality or tamer separation
 - Requires the state to be neutral in its relation with groups of religious believer; the relationship is not necessarily adversarial
 - Allow for interaction between church and state, but is strict with regard to state action which would threaten the integrity of religious commitment
 - The basis of government action has a secular criteria and religion may not be used as a basis for classification of purposes
 - Public policy and the constitution require the government to avoid religion-specific policy
- (2) **Benevolent neutrality and the Doctrine of Accommodation** (*infra.*)

B. FREE EXERCISE CLAUSE

The **Free Exercise Clause** affords absolute protection to individual religious convictions. However, the government is able to regulate the times, places, and manner of its exercise [*Cantwell v. Connecticut*]. "Under the Free Exercise Clause, religious belief is absolutely protected, religious speech and proselytizing are highly protected but subject to restraints applicable to non-religious speech, and unconventional religious practice receives less protection; nevertheless conduct, even if it violates the law, could be accorded protection." [*Estrada v. Escritor* (2003)]

Dual Aspect

- (1) Freedom to believe – absolute
- (2) Freedom to act on one's belief – subject to regulation

Laws and Acts Justified Under Free Exercise Clause

- (1) Exemption from flag salute in school [*Ebralinag v. Division Superintendent of Schools of Cebu* (1993)]
- (2) Freedom to propagate religious doctrines

The power to tax the exercise of the privilege is the power to control or suppress its enjoyment [*American Bible Society v. City of Manila* (1957)]
- (3) Exemption from union shop

Congress acted merely to relieve persons of the burden imposed by union security agreements.
- (4) Non-disqualification of religious leaders from local government office [*Pamil v. Teleron*(1978)]
- (5) Working hours from 7:30 am to 3:30 pm without break during Ramadan [*Re: Request of Muslim Employees in the Different Courts of Iligan City* (2005)]

- (6) Exemption from administrative charge on immorality

Cohabiting with a married man with church sanction evidenced by a document of "Declaration of Pledging Faithfulness" [*Estrada v. Escritor* (2003)]

Laws and Acts Violative Of Free Exercise

Duty to Refer in the RH Law

The provisions mandating a "hospital or a medical practitioner to immediately refer a person seeking health care and services under the law to another accessible healthcare provider despite their conscientious objections based on religious or ethical beliefs" is violative of free exercise. The Court held that this opt-out class is a false compromise because it cannot force someone, in conscience, to do indirectly what they cannot do directly. [*Imbong v. Ochoa, supra*]

N.B. The Court, however, held that the policy of the government with regard to the promotion of contraceptives was not violative of the establishment clause. "[T]he State is not precluded to pursue its legitimate secular objectives without being dictated upon by the policies of any one religion." [*Id.*]

B.1 BENEVOLENT NEUTRALITY DOCTRINE

It protects religious realities, tradition, and established practice with a flexible reading of the principle of separation of church and state.

The Doctrine of Accommodation allows the government to take religion into account when creating government policies to allow people to exercise their religion without hindrance. The effect they want to achieve is to remove a burden on one's exercise. The government may take religion into account to exempt, when possible, from generally applicable governmental regulation individuals whose religious beliefs and practices would be infringed, or to create

without state involvement, an atmosphere in which voluntary religious exercise may flourish.

The breach in the wall between church and state is allowed in order to uphold religious liberty, which is the integral purpose of the religion clauses. The purpose of accommodation is to remove the burden on a person's exercise of his religion.

Although morality contemplated in laws is secular, **benevolent neutrality** could allow for accommodation of morality based on religion, provided it does not offend compelling state interests. [*Estrada v. Escritor* (2003)]

Note: *Estrada* is a carefully crafted doctrine, the use of which is limited for the protection of religious minorities.

N.B. "Matters dealing with 'faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church ... are unquestionably ecclesiastical matters which are outside the province of the civil courts.' The jurisdiction of the Court extends only to public and secular morality." [*Imbong v. Ochoa, supra*]

C. TESTS

C.1 CLEAR AND PRESENT DANGER

Used for religious speech.

In order to justify restraint the court must determine whether the expression presents a clear and present danger of any substantive evil, which the state has a right to prevent. [*American Bible Society v City of Manila* (1957) citing *Tañada and Fernando on the Constitution of the Philippines*, Vol. 1, 4th ed., p. 297]

C.2 BENEVOLENT NEUTRALITY – COMPELLING STATE INTEREST

Test where conduct arising from religious belief is involved.

Under the **Benevolent Neutrality Doctrine**, this is the proper test where conduct arising from religious belief is involved.

- (1) Has the gov't action created a burden on the free exercise? Court must look into sincerity (but not truth) of belief.
- (2) Is there a compelling state interest to justify the infringement?
- (3) Are the means to achieve the legitimate state objective the least intrusive? [*Escritor*, *supra*]

C.3 CONSCIENTIOUS OBJECTOR

In the RH Law

Sections 7, 23, and 24 of RA 10354 (*Reproductive Health Law*) impose upon the conscientious objector the duty to refer the patient seeking reproductive health services to another medical practitioner.

A conscientious objector should be exempt from compliance with the mandates of the RH Law. If he is compelled to act contrary to his religious belief and conviction, it would be violative of "the principle of non-coercion" enshrined in the constitutional right to free exercise of religion.

The Court found no compelling state interest which would limit the free exercise of conscientious objectors. Only the prevention of an immediate danger to the security and welfare of the community can justify the infringement of religious freedom. Also, respondents failed to show that the means to achieve the legitimate state objective is the least intrusive means. [*Imbong vs. Ochoa* (2014)]

Compulsory Military Service

It may also be a ground for exemption from compulsory military service; expanded version provides exemption even to those who object war based on non-religious beliefs i.e. non-theist.

Criteria:

- (a) There must be belief in God or a parallel belief occupying a central place in the believer's life
- (b) Religion must involve a moral code transcending individual belief; cannot be purely subjective
- (c) Demonstrable sincerity in belief must be shown, but court cannot inquire into its truth or reasonableness [*United States v. Seeger*, 380 U.S. 163 (1965)]
- (d) There must be some associational ties. [*Estrada v. Escritor A.M. No. P-02-1651*. August 4, 2003]

IX. Liberty of Abode and Freedom of Movement

Art. III, Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law.

"Liberty" as understood in democracies, is not license; it is "liberty regulated by law."

A. LIMITATIONS

Freedom of movement includes two rights:

(1) Liberty of abode

- a. It may be impaired only upon lawful order of the court
- b. The court itself is to be guided by the limits prescribed by law

Example: A condition imposed by the court in connection with the grant of bail.

(2) Liberty of travel

- a. May be impaired even without a lawful order of the court
- b. But the appropriate executive officer (who may impair this right) is not granted arbitrary discretion to impose limitations
- c. He can only do so on the basis of "national security, public safety, or public health" and "as may be provided by law" (e.g. Human Security Act, quarantine)
- d. Impairment of this liberty is subject to judicial review

The executive of a municipality does not have the right to force citizens of the Philippine Islands to change their domicile from one locality to another. [*Villavicencio v. Lukban* (1919)]

A condition imposed by the court in connection with the grant of bail is an example of a valid limitation to liberty

Relocation of Manguinaes, a nomadic people, is a proper restraint to their liberty. It is for their advancement in civilization and so that material prosperity may be assured. [*Rubi vs. Provincial Board* (1919)]

Restraint on right to travel of accused on bail is allowed to avoid the possibility of losing jurisdiction if accused travels abroad. [*Manotoc vs. CA* (1986)]

OCA Circular No. 49-2003 which requires that all foreign travels of judges and court personnel must be with prior permission from the Court does not restrict but merely regulates the right to travel. To "restrict" is to restrain or prohibit a person from doing something, to "regulate" is to govern or direct according to rule. [*OCA v. Macarine* (2012)]

A person's right to travel is subject to usual constraints imposed by the very necessity of safeguarding the system of justice. In such cases, whether the accused should be permitted to leave the jurisdiction for humanitarian reasons is a matter of the court's sound discretion. [*Marcos v. Sandiganbayan* (1995)]

The right to travel does not mean the right to choose any vehicle in traversing a toll way. The right to travel refers to the right to move from one place to another... The mode by which petitioners wish to travel pertains to the manner of using the toll way, a subject that can be validly limited by regulation... The right to travel does not entitle a person to the best form of transport or to the most convenient route to his destination. [*Mirasol v DPWH* (2006)]

Watch List Order

Issued against accused in criminal cases (irrespective of nationality in RTC or below) or against any person with pending case in DOJ. (As of this publication, the constitutionality of watch list orders is being challenged in the Supreme Court in *Arroyo v. Sec. of Justice*.)

Hold-Departure Order

Issued against accused in criminal cases (irrespective of nationality in courts below RTC), aliens (defendant, respondent, and witness in pending civil or labor case), and any person motu proprio by Sec of Justice or request of heads of departments, Constitutional Commissions, Congress, or SC.

Both orders are issued by Secretary of Justice [Department Circular No.41, June 7, 2010].

Hold departure order is but an exercise of the [Sandiganbayan's] inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused. [*Santiago v. Vasquez* (1993)]

Holding an accused in a criminal case within the reach of the courts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law. [*Silverio v. CA* (1991)]

B. RIGHT TO RETURN TO ONE'S COUNTRY

Right to return to one's country, a distinct right under international law, is independent from although related to the right to travel.

The President has the power (residual/implied) to impair the right to return when such return poses threats to the government. [*Marcos v. Manglapus* (1989)]

X. Right to Information

Art. III, Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Art. II, Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

Art. XVI, Sec. 10. The State shall provide the policy environment for the full development of Filipino capability and the emergence of communication structures suitable to the needs and aspirations of the nation and the balanced flow of information into, out of, and across the country in accordance with a policy that respects the freedom of speech and of the press.

Policy of Full Public Disclosure v. Right to Information [See *IDEALS v. PSALM*, G.R. No. 192088; October 9, 2012]

<i>Policy of Full Public Disclosure</i> [Art. II, Sec. 28]	<i>Right to Information on Matters of Public Concern</i> [Art. III, Sec. 7]
Matter	
All transactions involving public interest, including any matter contained in official communications and public documents of the government agency.	Matters of public concern. [Public Concern: no exact definition and adjudicated by the courts on a case-by-case basis, but examples abound in jurisprudence (e.g. peace negotiations, board exams, PCGG compromise agreements, civil service matters).]

<i>Policy of Full Public Disclosure</i> [Art. II, Sec. 28]	<i>Right to Information on Matters of Public Concern</i> [Art. III, Sec. 7]
Demand to Access	
	Demand or request required to gain access.
What is Asserted	
Duty to disclose of the government, pursuant to the policy of full public disclosure.	Duty to permit access to information on matters of public concern.

These twin provisions of the Constitution seek to promote transparency in policy-making and in the operation of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. These twin provisions are also essential to hold public official "at all times x x x accountable to the people", for unless the citizens have the proper information, they cannot hold public officials accountable for anything. [*Chavez v. PEA and Amari* (2002)]

"Public concern" like "public interest" embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. [*Legaspi v. CSC* (1987)]

Scope of Right to Access Information

Essence: matters of public concern

1. Official records
2. Documents pertaining to official acts
3. Government research data used as basis for policy development

Matters of public concern includes:

- Loanable funds of GSIS [*Valmonte v. Belmonte* (1989)]
- Civil service eligibility of sanitation employees [*Legaspi v. CSC* (1987)]

- Appointments made to public offices and the utilization of public property [*Gonzales v. Narvasa* (2000)]
- National board examinations such as the CPA Board Exams [*Antolin v. Domondon* (2010)]
- Names of nominees of partylists [*Bantay Republic v. COMELEC* (2007)]
- Negotiations leading to the consummation of the transaction [*Chavez v. PEA and Amari* (2002)]

A. LIMITATIONS

The right of the people to information must be balanced against other genuine interest necessary for the proper functioning of the government (*Bernas*)

Restrictions to the right to information may be:

- (1) Based on kinds of information.

Exempted information:

- (a) Privileged information rooted in separation of powers
- (b) Information of military and diplomatic secrets
- (c) Information affecting national and economic security
- (d) Information on investigations of crimes by law enforcers before prosecution [*Chavez v. PEA and Amari*, (2002)]
- (e) Trade secrets and banking transactions [*Chavez v. PCGG* (1998)]
- (f) Offers exchanged during diplomatic negotiations [*Akbayan v. Aquino* (2008)]
- (g) Other confidential matters (i.e. RA 6713, closed door Cabinet meetings, executive sessions, or internal deliberations in the Supreme Court) [*Chavez v. PCGG* (1998)]

(2) Based on access:

- (a) Opportunity to inspect and copy records at his expense. [*Chavez v. PEA and Amari*, (2002)]
- (b) Not the right to compel custodians of official records to prepare lists, abstracts, summaries and the like. [*Valmonte v. Belmonte* (1989)]

(3) Based on reasonable regulation for the convenience of and for order in the office that has custody of the documents. [*Baldoza v. Dimaano* (1976)]

- Discretion does not carry with it the authority to prohibit access, inspection, examination, or copying. [*Lantaco v. Llamas* (1981)]
- The authority to regulate the manner of examining public records does not carry with it the power to prohibit x x x Thus, while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. [*Legaspi v. CSC* (1987)]

(4) Based on availability.

Right available only to citizens

In case of denial of access, the government agency has the burden of showing that the information requested is not of public concern, or if it is of public concern, that the same has been exempted by law from the operation of the guarantee. [*Legaspi v. CSC* (1987)]

B. PUBLICATION OF LAWS AND REGULATIONS

General: Full publication is a condition for law's effectivity.

Scope: All statutes (includes those of local application and private laws), presidential decrees and executive orders by President

acting under power either directly conferred by the Constitution or validly delegated by the legislature, and administrative rules and regulations for implementing existing laws, charter of a city, circulars by Monetary Board.

Internal regulations and letter of instructions concerning guidelines for subordinates and not the public are not included.

Effectivity: Fifteen days after publication unless a different effectivity date is fixed by the legislature [*Tañada v. Tuvera* (1986)]

Note: *Tañada v. Tuvera* explains that the publication of laws and regulations is also a due process concern.

C. ACCESS TO COURT RECORDS

Canon II Confidentiality Code of Conduct for Court Personnel (AM No. 03-06-13-SC)

Section 1. Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the judiciary, whether such information came from authorized or unauthorized sources.

Confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers.

The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public.

Decisions are matters of public concern and interest.

Pleadings and other documents filed by parties to a case need not be matters of public concern or interest. They are filed for the purpose of establishing the basis upon which the court may issue an order or a judgement affecting their rights and interest.

Access to court records may be permitted at the discretion and subject to the supervisory and protective powers of the court, after considering the actual use or purpose for which the request for access is based and the obvious prejudice to any of the parties. [*Hilado, et al v. Judge (2006)*]

Note: See Constitutional Law I Reviewer (Judicial Department) for a detailed discussion of the rules on disclosure of court records.

D. RIGHT TO INFORMATION RELATIVE TO GOVERNMENT CONTRACT NEGOTIATIONS

The constitutional right to information includes official information on on-going negotiations before a final contract. The information, however, must constitute definite propositions by the government, and should not cover recognized exceptions. [*Chavez v. PEA and Amari (2002)*]

Definite propositions

While evaluation of bids or proposals is on-going, there are no "official acts, transactions, or decisions." However, once the committee makes an official recommendation, there arises a definite proposition. From this moment, the public's right to information attaches, and any citizen can assail the non-proprietary information leading to such definite propositions. [*Chavez v. PEA and Amari (2002)*]

Diplomatic Negotiations

Diplomatic secrets (Diplomatic Negotiations Privilege): Secrecy of negotiations with foreign countries is not violative of the right to information. Diplomacy has a confidential nature. While the full text [of the JPEPA] may not be kept perpetually confidential, it is in line with the public interest that the offers exchanged during negotiations continue to be privileged information. Furthermore, the information sought includes docs produced and communicated by a party external to the PHL gov't. However, such privilege is merely presumptive, and will not apply to all cases. [*Akbayan v. Aquino (2008)*]

Presidential Communications Privilege v. Deliberative Process Privilege [*Neri v. Senate Committee (2008)*]

Presidential Communications Privilege - applies to decision-making of the President; rooted in the constitutional principle of separation of power and the President's unique constitutional role; applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones; meant to encompass only those functions that form the core of presidential authority.

Requisites:

- (1) The communications relate to a "quintessential and non-delegable power" of the President
- (2) The communications are "received" by a close advisor of the President.
- (3) There is no adequate showing of a compelling need that would justify the limitation of the privilege and of the unavailability of the information elsewhere by an appropriate investigating authority.

Deliberative Process Privilege – applied to decision-making of executive officials; rooted in common law privilege; that there is a “governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other security matters.

Court Hearings

Right of accused over right to public information: With the possibility of losing not only the precious liberty but also the very life of an accused, it behooves all to make absolutely certain that an accused receives a verdict solely on the basis of a just and dispassionate judgment, a verdict that would come only after the presentation of credible evidence testified to by unbiased witnesses unswayed by any kind of pressure, whether open or subtle, in proceedings that are devoid of histrionics that might detract from its basic aim to ferret veritable facts free from improper influence, and decreed by a judge with an unprejudiced mind unbridled by running emotions or passions. [Re: *Request for Live Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases against former President Joseph Ejercito Estrada, Secretary of Justice Hernando Perez v. Joseph Ejercito Estrada*, A.M. No. 00-1-4-03-SC, June 29, 2001]

XI. Right to Association

Art. III, Sec. 8. The right of the people, including those employed in the public and private sectors, to form unions, association, or societies for purposes not contrary to law shall not be abridged.

Art. XIII, Sec. 3. xxx [The State] shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with the law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision making process affecting their rights and benefits as may be provided by law.

Art. IX-B, Sec. 2(5). The right to self-organization shall not be denied to government employees.

Origin: Malolos Constitution

Interpretation of “for purposes not contrary to law”: same as clear and present danger rule, only such may justify abridgement to the right to form association or society. [*Gonzales v. COMELEC* (1969)]

The government must comply with the heavy burden of showing that the organization in fact presents a clear and present danger of substantive evil which the state has the right to protect. (*Bernas*)

Scope: The right is recognized as belonging to people whether employed or unemployed, and whether employed in the government or in the private sector. Includes the right to unionize.

The State does not infringe on the fundamental right to form lawful associations when it leaves to citizens the

power and liberty to affiliate or not affiliate with labor unions. [*Victoriano v. Elizalde* (1974)]

Every group has a right to join the democratic process, association itself being an act of expression of the member's belief, even if the group offends the sensibilities of the majority. Any restriction to such requires a compelling state interest to be proven by the State. [*Ang Ladlad LGBT Party v. COMELEC* (2010)]

Political parties may freely be formed although there is a restriction on their activities x x x The ban against the participation of political parties in the barangay election is an appropriate legislative response to the unwholesome effects of partisan bias in the impartial discharge of the duties imposed on the barangay and its officials as the basic unit of our political and social structure. [*Oceña v. COMELEC* (1984)]

A political group should not be hindered solely because it seeks to publicly debate controversial political issues in order to find solutions capable of satisfying everyone concerned. Only if a political party incites violence or puts forward policies that are incompatible with democracy does it fall outside the protection of the freedom of association guarantee. [*Ang Ladlad LGBT Party v. COMELEC* (2010)]

The freedom of association presupposes a freedom not to associate. An organization may remove a member if:

- (1) It is engaged in some form of expression, whether public or private
- (2) The forced inclusion of a member would significantly affect the organization's ability to advocate public or private viewpoints [*Boy Scouts of America v. Dale* (2000)]

Does not include the right to compel others to form an association. But there may be situations in which, by entering into a contract, one may also be agreeing to join an association. (*Bernas*)

If a land buyer who buys a lot with an annotated lien that the lot owner becomes an automatic member of a homeowners' association thereby voluntarily joins the association. [*Bel-Air Village Association vs Diokno* (1989)]

As lot owner, PADCOM is a regular member of the association. No application for membership is necessary x x x PADCOM was never forced to join the association. It could have avoided such membership by not buying land from TDC. PADCOM voluntarily agreed to be bound by and respect the condition, and thus, join the association. [*PADCOM Condominium Corp. v. Ortigas Center Assoc.* (2002)]

See also labor cases on union shop clauses which have been held to be not violative of the Constitution.

Note: Right to association and right to unionize of government employees do not include the right to strike, walkouts and other temporary work stoppages. [*SSS Employees Association v CA*, (1989) and *Manila Public School Teachers Assoc. v Laguio, Jr.* (2001)]

Labor Unionism

- (1) Legal personality as pre-condition for effective association action

The right to form associations does not necessarily include the right to be given legal personality. However, if the law itself should make possession of legal personality a pre-condition for effective associational action, involved would be not just the right to have legal personality but also the right to be an association. [*Philippine Association of Free Labor Unions v. Secretary of Labor* (1969)]

- (2) Eligibility to join, assist or form union expressly denied by law

The right of association of managerial employees is denied because of Article 245 of the Labor Code which provides that managerial employees are not eligible to join, assist or form any labor

organization. This is because Art III Sec 8 is subject to the condition that its exercise is for the purposes not contrary to law. [*United Pepsi-Cola Supervisory Union (UPSU) v. Laguesma (1998)*]

Integrated Bar of the Philippines

Compulsory membership of a lawyer in the integrated bar of the Philippines does not violate the constitutional guarantee. [*In Re: Edillon, 84 SCRA 554*]

XII. Eminent Domain

Art. III, Sec. 9. Private property shall not be taken for public use without just compensation.

Art. XII, Sec. 18. The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the government.

Art. XIII, Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof.

To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation.

In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Art. XIII, Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centers and resettlement areas.

It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

Art. XIV, Sec. 13. The National assembly may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens.

A. CONCEPT

Eminent domain is an inherent power of the state that enables it to forcibly acquire private lands intended for public use upon payment of just compensation to the owner. [*Assoc. of Small Land Owners in the Phils., Inc. v. Sec. of Agrarian Reform* (1989)]

Requisites for Valid Exercise of Eminent Domain

- (a) Private property
- (b) Genuine necessity: inherent/presumed in legislation, but when the power is delegated (e.g. local government units), necessity must be proven
- (c) For public use: Court has adopted a broad definition of "public use," following the U.S. trend
- (d) Payment of just compensation
- (e) Due process [*Manapat v. CA* (2007)]

Requisites for Valid Exercise of Eminent Domain by Local Governments

[LGUs, Sec. 19, Local Government Code]

- (a) Ordinance by a local legislative council is enacted authorizing local chief executive to exercise eminent domain,
- (b) For public use, purpose or welfare or for the benefit of the poor and of the landless,
- (c) Payment of just compensation,
- (d) Valid and definite offer has been previously made to owner of the property sought to be expropriated but such offer was not accepted [*Municipality of Parañaque v. VM Realty* (1998)]

Scope and Limitations

All private property capable of ownership may be expropriated, except money and choses in action. Even services may be

subject to eminent domain. [*Republic v. PLDT*, 26 SCRA 620]

Exercise of right to eminent domain is strictly construed against the State or its agent because such right is necessarily in derogation of private rights. [*Jesus is Lord Christian School Foundation v. Municipality of Pasig*, G.R. No. 152230, August 9, 2005]

Necessity

The foundation of the right to exercise eminent domain is genuine necessity and that necessity must be of public character. Government may not capriciously or arbitrarily choose which private property should be expropriated. [*Lagcao v. Judge Labra*, G.R. No. 155746, October 13, 2004]

Exercise by Congress

When the power is exercised by the legislature, the question of necessity is generally a political question. [*Municipality of Meycauyan, Bulacan v. Intermediate Appellate Court*, 157 SCRA 640]

Exercise by Delegate

- (1) Grant of special authority for special purpose – political question
- (2) Grant of general authority – justiciable question [*City of Manila v. Chinese Community of Manila* (1919)]

The RTC has the power to inquire into the legality of the exercise of the right of eminent domain and to determine whether there is a genuine necessity for it. [*Bardillon v. Barangay Masili of Calamba, Laguna*, G.R. No. 146886, April 30, 2003]

Private Property

Private property already devoted to public use cannot be expropriated by a delegate of legislature acting under a general grant of authority. [*City of Manila v. Chinese Community*, 40 Phil 349]

Generally, all private property capable of ownership may be expropriated, except money and chooses in action. [*Republic v. PLDT* (1969)]

A chose in action is a proprietary right in personam, such as debts owned by another person, a share in a joint-stock company, or a claim for damages in tort; it is the right to bring an action to recover a debt, money or thing [*Black's Law Dictionary*]

It should be clarified that even if under PD 27, tenant farmers are "deemed owners" as of October 21, 1972 x x x [c]ertain requirements must also be complied with, such as payment of just compensation, before full ownership is vested upon the farmers. [*Heirs of Dr. Deleste v LBP* (2011)]

Taking

The exercise of the power of eminent domain does not always result in the taking or appropriation of title to the expropriated property; it may only result in the imposition of a burden upon the owner of the condemned property, without loss of title or possession. [*National Power Corporation v. Gutierrez*, 193 SCRA 1]

Requisites for a valid taking:

- (a) The expropriator must enter a private property
- (b) Entry must be for more than a momentary period
- (c) Entry must be under warrant or color of legal authority
- (d) Property must be devoted to public use or otherwise informally appropriated or injuriously affected
- (e) Utilization of the property must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property. [*Republic v. Castelvi* (1974)]

The taking contemplated is not a mere limitation of the use of the land. What is required is the surrender of the title to and the physical possession of the said excess and all beneficial rights accruing to the

owner in favor of the farmer-beneficiary. [*Assoc. of Small Land Owners in the Phils., Inc. v. Sec. of Agrarian Reform* (1989)]

Sequestration is merely "intended to prevent the destruction of sequestered properties and, thereby, to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten". It is not meant to deprive the owner or possessor of his title or any right to his property and vest the same in the sequestering agency, the Government or any other person, as these can be done only for the causes and by the process laid down by law. [*Republic v. Estate of Hans Menzi* (2012)]

Due Process

Hearing or procedure for determination of propriety of the expropriation or the reasonableness of the compensation must be provided. [*Belen v. CA* (1991)]

B. EXPANSIVE CONCEPT OF "PUBLIC USE"

Public use as a requirement for the valid exercise of the power of eminent domain is now synonymous with public interest, public benefit, public welfare and public convenience. It includes the broader notion of indirect public benefit or advantage. Public use as traditionally understood as "actual use by the public" has already been abandoned.

Mining industry plays a pivotal role in the economic development of the country and is a vital tool in the government's thrust of accelerated recovery. Thus, that public use is negated by the fact that the state would be taking private properties for the benefit of private mining firms or mining contractors is not at all true. [*Didipio Earth Savers (DESAMA) v. Gozun* (2006)]

The idea that "public use" means "use by the public" has been discarded. At present, whatever may be beneficially employed for the general welfare satisfies the requirement of public use.

Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets. The lease of store spaces in underpasses of streets built on expropriated land does not make the taking for a private purpose. Airports and piers catering exclusively to private airlines and shipping companies are still for public use. The expropriation of private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns. [*Heirs of Ardon v. Reyes* (1983)]

That only a few benefit from the expropriation does not diminish its public-use character, inasmuch as public use now includes the broader notion of indirect public benefit or advantage. [*Filstream International v. CA*, 284 SCRA 716]

"Socialized housing" falls within the confines of "public use". It is particularly important to draw attention to Presidential Decree No. 1224 which opportunities inextricably linked with low-cost housing, or slum clearance, relocation and resettlement, or slum improvement emphasize the public purpose of the project. [*Sumulong v. Guerrero* (1987)]

C. JUST COMPENSATION

It is the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation.

Full and fair equivalent of the property taken; it is the fair market value of the

property. [*Province of Tayabas v. Perez* (1938)]

All the facts as to the conditions of the property and its surroundings, its improvements and capabilities should be considered. [*EPZA v. Dulay* (1987)]

C.1 DETERMINATION

Basis: Fair market value

Fair market value – price fixed by a buyer desirous but not compelled to buy and a seller willing but not compelled to sell.

Must include consequential damages (damages to other interest of the owner attributable to the expropriation) and deduct consequential benefits (increase of value of other interests attributable to new use of the former property).

However, where only a portion of the property is taken, the owner is entitled only to the market value of the portion actually taken and the consequential damage to the remaining part.

Who Determines

Determination of just compensation is a judicial function. [*National Power Corporation v. Sps. Florimon v. Lletto, et al.*, (2012)]

Presidential Decrees (and statutes, in general, including Agrarian Reform laws) merely serve as guide/factors for the courts in determining just compensation. [*EPZA v. Dulay*, 148 SCRA 305]

See, however, *LBP v. Yatco Agricultural Enterprises* (2014) where the Court ruled that the RTC (acting as Special Agrarian Court) is not granted unlimited discretion but must consider and apply RA 6657 and the DAR formula. The Court may, in the exercise of its discretion relax the application of the formula but it must clearly explain its reason for such deviation.

Findings of court appointed commissioners regarding the determination of just compensation are not binding on courts. [*Republic v. Santos*, 141 SCRA 30; *Republic (MECS) v. IAC*, 185 SCRA 572]

- (1) The court may substitute its own estimate of the value of the property only for valid reasons: the commissioners have applied illegal principles to the evidence submitted to them;
- (2) They have disregarded a clear preponderance of evidence; or
- (3) Where the amount allowed is either grossly inadequate or excessive. [*National Power Corporation v. De la Cruz*, G.R. No. 156093, February 2, 2007]

When determined

General rule: At the time of the filing of the case

Exception: If the value of the property increased because of the use to which the expropriator has put it, the value is that of the time of the taking. [*NAPOCOR v. CA* (1996)]

Legal interest: 6%, time when payment is due to actual payment

C.2 EFFECT OF DELAY

Just compensation means not only the correct amount to be paid to the owner of the land but also payment within a reasonable time from its taking [*Eslaban v. De Onorio*, G.R. No. 146062, June 28, 2001]

General rule on delay of payment: For non-payment, the remedy is the demand of payment of the fair market value of the property and not the recovery of possession of the expropriated lots. [*Republic of the Philippines v. Court of Appeals*, G.R. No. 146587, July 2, 2002; *Reyes v. National Housing Authority*, G.R. No. 147511, January 29, 2003]

Exception: When the government fails to pay just compensation within five years from the finality of the judgment in the expropriation proceedings, the owners concerned shall have the right to recover possession of their property. [*Republic of the Philippines v. Vicente Lim*, G.R. No. 161656, June 29, 2005]

D. ABANDONMENT OF INTENDED USE AND RIGHT OF REPURCHASE

If the expropriator (government) does not use the property for a public purpose, the property reverts to the owner in fee simple. [*Heirs of Moreno v. Mactan-Cebu International Airport* (2005)]

E. MISCELLANEOUS APPLICATION

“Taking” Under Social Justice Clause

Agrarian Reform [Art. XIII, Sec. 4]: This provision is an exercise of the police power of the State through eminent domain [*Association of Small Landowners v. Secretary of Agrarian Reform*] as it is a means to regulate private property.

Retention limits prescribed by the Comprehensive Agrarian Reform Law is also form of taking under the power of eminent domain. The taking contemplated is not a mere limitation on the use of the land, but the surrender of the title to and physical possession of the excess and all beneficial rights accruing to the owner in favor of the beneficiary. [*Sta. Rosa Realty & Development Corp. v. Court of Appeals*, G.R. No. 112526, October 12, 2001]

XIII. Contracts Clause

Art. III, Sec. 10. No law impairing the obligation of contracts shall be passed.

A law which changes the terms of a legal contract between parties, either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided in its terms, is law which impairs the obligation of a contract and is therefore null and void.

Impairment is anything that diminishes the efficacy of the contract. [*Clements v. Nolting* (1922)]

The purpose of the non-impairment clause of the Constitution is to safeguard the integrity of contracts against unwarranted interference by the State. [*Goldenway Merchandising Corp. v. Equitable PCI Bank* (2013)]

Requisites:

(a) Substantial impairment

- (i) Change the terms of legal contract either in time or mode of performance
- (ii) Impose new conditions
- (iii) Dispenses with expressed conditions
- (iv) Authorizes for its satisfaction something different from that provided in the terms

(b) Affects rights of parties with reference to each other, and not with respect to non-parties. [*Philippine Rural Electric Cooperatives Association v. Secretary, DILG*, (2003)]

A. CONTEMPORARY APPLICATION OF THE CONTRACT CLAUSE

When Non-Impairment Clause Prevails:

- (1) Against power of taxation
- (2) Regulation on loans

New regulations on loans making redemption of property sold on foreclosure stricter are not allowed to apply retroactively. [*Co v. Philippine National Bank* (1982)]

To substitute the mortgage with a surety bond would convert such lien from a right *in rem*, to a right *in personam*. This conversion cannot be ordered for it would abridge the right of the mortgagee under the mortgage contract [and] would violate the non-impairment of contracts guaranteed under the Constitution. [*Guanzon v. Inserto* (1983)]

When Non-Impairment Clause Yields:

- (1) Valid exercise of police power i.e. zoning regulation [*Presley v. Bel-Air Village Association* (1991)], premature campaign ban [*Chavez v. COMELEC* (2004)], liquidation of a chartered bank [*Philippine Veterans Bank Employees Union v. Philippine Veterans Bank* (1990)]
- (2) Statute that exempts a party from any one class of taxes
- (3) Against freedom of religion [*Victoriano v. Elizalde Rope Workers* (1974)]
- (4) Judicial or quasi-judicial order

The non-impairment clause is a limit on legislative power, and not of judicial or quasi-judicial power. The approval of the Rehabilitation Plan by the Securities and Exchange Commission is an exercise of adjudicatory power by an administrative agency and thus the non-impairment clause does not apply. Neither does it impair the power to contract. [*BPI v. SEC* (2007)]

Section 47 [of RA 8791] did not divest juridical persons of the right to redeem their foreclosed properties but only modified the time for the exercise of such right by reducing one-year period originally provided in Act No. 3135. [*Goldenway Merchandising Corp. v. Equitable PCI Bank* (2013)]

PD 957 [The Subdivision and Condominium Buyers Protective Decree] is to be given retroactive effect so as to cover even those contracts executed prior to its enactment in 1976. PD 957 did not expressly provide for retroactivity in its entirety, but such can be plainly inferred from the unmistakable intent of the law. [*Eugenio v. Drilon* (1996)]

Note: Timber licenses, permits, and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. They are not deemed contracts within the purview of the due process of law clause. [*Oposa v. Factoran* (1993)]

Being a mere privilege, a license does not vest absolute rights in the holder. Thus, without offending the due process and non-impairment clauses of the Constitution, it can be revoked by the State in the public interest. [*Republic v. Rosemoor Mining* (2004)]

Certificates granting “a permit to operate” businesses are in the nature of license. [*Republic v. Caguioa* (2007)]

B. LIMITATIONS

It is ingrained in jurisprudence that the constitutional prohibition does not prohibit every change in existing laws. To fall within the prohibition, the change must not only impair the obligation of the existing contract, but the impairment must be substantial. Moreover, the law must effect a change in the rights of the parties with reference to each other, and not with respect to non-parties. [*Philippine Rural Electric Cooperatives Association v. Secretary, DILG*, (2003)]

XIV. Legal Assistance and Free Access to Courts

Rule 141, Sec. 19, Rules of Court. *Indigent litigants exempt from payment of legal fees.* — Indigent litigants (a) whose gross income and that of their immediate family do not exceed four thousand (P4,000.00) pesos a month if residing in Metro Manila, and three thousand (P3,000.00) pesos a month if residing outside Metro Manila, and (b) who do not own real property with an assessed value of more than fifty thousand (P50,000.00) pesos shall be exempt from the payment of legal fees.

The legal fees shall be a lien on any judgment rendered in the case favorably to the indigent litigant, unless the court otherwise provides.

To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn a gross income abovementioned, nor they own any real property with the assessed value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit.

Any falsity in the affidavit of a litigant or disinterested person shall be sufficient cause to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

Art. III, Sec. 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Rule 3, Sec. 21. Rules of Court. Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If the payment is not made within the time fixed by the court, execution shall issue or the payment thereof, without prejudice to such other sanctions as the court may impose.

Sec 4, RA 9999. Requirements for Availment.

- For purposes of availing of the benefits and services as envisioned in this Act, a lawyer or professional partnership shall secure a certification from the Public Attorney's Office (PAO), the Department of Justice (DOJ) or accredited association of the Supreme Court indicating that the said legal services to be provided are within the services defined by the Supreme Court, and that the agencies cannot provide the legal services to be provided by the private counsel.

For purpose of determining the number of hours actually provided by the lawyer and/or professional firm in the provision of legal services, the association and/or organization duly accredited by the Supreme Court shall issue the necessary certification that said legal services were actually undertaken.

Sec. 5, RA 9999. Incentives to Lawyers. - For purposes of this Act, a lawyer or professional partnerships rendering actual free legal services, as defined by the Supreme Court, shall be entitled to an allowable deduction from the gross income, the amount that could have been collected for the actual free legal services rendered or up to ten percent (10%) of the gross income derived from the actual performance of the legal profession, whichever is lower: Provided, That the actual free legal services herein contemplated shall be exclusive of the minimum sixty (60)-hour mandatory legal aid services rendered to indigent litigants as required under the Rule on Mandatory Legal Aid Services for Practicing Lawyers, under BAR Matter No. 2012, issued by the Supreme Court.

and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.

If the applicant for exemption meets the salary and property requirements under Section 19 of Rule 141, then the grant of the application is mandatory. On the other hand, when the application does not satisfy one or both requirements, then the application should not be denied outright; instead, the court should apply the "indigency test" under Sec. 21 of Rule 3 and use its should discretion in determining the merits of the prayer for exemption. [Sps. *Algura v. LGU of Naga City* (2006)]

Note: The significance of having an explicit "free access" provisions in the Constitution may be gathered from the rocky road which "free access" seems to have traveled in American jurisprudence. The American constitution does not have an explicit free access provision and, hence, its free access doctrine has been developed as implicit from both the equal protection clause and the due process clause. [Bernas]

Exemption of cooperatives from payment of court and sheriff fees no longer stands. Cooperatives can no longer invoke RA 9520, as amended by RA 9520, as basis for exemption from the payment of legal fees. [Re: *In the matter of clarification of exemption from payment of all court and sheriffs fees of cooperatives* (2012)]

Indigent party — A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an ex parte application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket

XV. Rights of Suspects

Art. III, Sec. 12

- (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
- (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.
- (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
- (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

In *Miranda v. Arizona*: The Federal Supreme Court made it clear that what is prohibited is the "*incommunicado* interrogation of individuals in a police dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights."

Miranda Rights

The person under custodial investigation must be informed that:

- (1) He has a right to remain silent and that any statement he makes may be used as evidence against him;
- (2) That he has a right to the presence of an attorney, either retained or appointed,
- (3) That he has a right to be informed of the first two rights.

RA 7438, Rights of Persons under Custodial Investigation

Section 1. Statement of Policy. - It is the policy of the Senate to value the dignity of every human being and guarantee full respect for human rights.

Section 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. - Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense:

- (1) Shall inform the latter, in a language known to and understood by him,
- (2) of his rights to remain silent and
- (3) to have competent and independent counsel, preferably of his own choice,
- (4) who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation.
- (5) If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

A. AVAILABILITY

- (1) When the person is already under custodial investigation
- (2) Custodial investigation involves any questioning initiated by law enforcement
- (3) During "critical pre-trial stages" in the criminal process

A.1 CUSTODIAL INVESTIGATION

Involves any questioning initiated by law enforcement.

When the investigation is no longer a general inquiry unto an unsolved crime but has begun to focus on a particular suspect,

as when the suspect has been taken into police custody and the police carries out a process of interrogation that lends itself to eliciting incriminating statements. [*People v. Mara (1994)*]

Includes issuing an invitation to a person under investigation in connection with an offense he is suspected to have committed. [Sec. 2, RA 7438]

A.1.1. CUSTODIAL INVESTIGATION REPORT

- (1) Reduced to writing by the investigating officer.
- (2) It shall be read and adequately explained to person arrested or detained by counsel or assisting counsel in a language or dialect known to him.

Non-compliance with second requirement will render the report null and void and of no effect whatsoever. [Sec 2c, RA 7438]

A.2 CRITICAL PRE-TRIAL STAGE

Any critical confrontation by the prosecution at pretrial proceedings where the results might well determine his fate and where the absence of counsel might derogate from his right to a fair trial. [*U.S. v. Wade, 388 U.S. 218 (1967)*]

A.3 SHOW-UP AND POLICE LINE-UP

General: No right to counsel

Out-of-court identification like a “**show-up**” (accused is brought face to face with the witness for identification), or “**police line-up**” (suspect is identified by witness from a group of persons gathered for that purpose).

Exception: Right to counsel if accusatory.

The moment there is a move or even an urge of said investigators to elicit admissions or confessions or even plain information which may appear innocent or innocuous at the time, from said suspect. [*Gamboa v Cruz (1988)*]

Police Line-Ups

When petitioner was identified by the complainant at the police line-up, he had not been held yet to answer for a criminal offense. The police line-up is not a part of the custodial inquest, hence, he was not yet entitled to counsel.

Thus, it was held that when the process had not yet shifted from the investigatory to the accusatory as when police investigation does not elicit a confession the accused may not yet avail of the services of his lawyer. [*Escobedo vs. Illinois of the United States Federal Supreme Court (1964)*]

However, given the clear constitutional intent in the 1987 Constitution, the moment there is a move or even an urge of said investigators to elicit admissions or confessions or even plain information which may appear innocent or innocuous at the time, from said suspect, he should then and there be assisted by counsel, unless he waives the right, but the waiver shall be made in writing and in the presence of counsel. [*Gamboa vs. Cruz (1988)*]

B. REQUISITES

Essence: Effective communication by the investigator of rights of accused [*People vs. Agustin (1995)*]

(a) Right to Remain Silent

The warning is needed simply to make the person under custodial investigation aware of the existence of the right.

This warning is the threshold requirement for an intelligent decision as to its exercise.

More importantly, such a warning is an absolute pre-requisite in overcoming the inherent pressures of the interrogation atmosphere.

Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.

(b) Right against Self-Incrimination under Art. III, Sec. 12

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court.

This warning is needed in order to make him aware not only of the privilege to remain silent, but also of the consequences of forgoing it.

(c) Right to Counsel

Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. –

- (a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel; otherwise the waiver shall be null and void and of no effect. [RA 7438, *Rights of Persons under Custodial Investigation, Section 2.*]

Essence: when a counsel is engaged by anyone acting on behalf of the person under investigation, or appointed by the court upon petition by said person or by someone on his behalf. [*People v. Espiritu*, G.R. No. 128287, February 2, 1999]

Competent and independent counsel preferably of the suspect's own choice.

Not independent counsel: special counsel, prosecutor, counsel of the police or a municipal attorney whose interest is adverse to that of the accused [*People v. Fabro*], mayor [*People v. Taliman*], barangay captain [*People v. Tomaquin*].

A lawyer who was applying for work in the NBI cannot be considered independent because he cannot be expected to work against the interest of a police agency he was hoping to join, as a few months later, he in fact was admitted into its work force. [*People vs. Januario* (1997)]

Not competent counsel: lawyer signing only as witness [*People v. Ordone*], mayor of town where accused is detained [*People v. Velarde*].

Failure to ask for a lawyer does not constitute a waiver.

No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings have been given.

Request for assistance of counsel before any interrogation cannot be ignored/denied by authorities. Not only right to consult with an attorney but right to be given a lawyer to represent him if he's indigent

(d) Rights to Visitation And Conference

Sec. 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. – (f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with:

(1) Any member of his immediate family, or

(2) Any medical doctor;

(3) Priest or religious minister

(a) chosen by him; or

(b) By his counsel; or

(c) By any national non-governmental organization duly accredited by the Commission on Human Rights or

(d) By any international non-governmental organization duly accredited by the Office of the President.

(e) The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

Exclusionary Rule

According to this rule, once the *primary source* (the tree) is shown to have been unlawfully obtained, any *secondary or derivative evidence* (the fruit) derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a *direct result* of the illegal act, whereas the *fruit of the poisonous tree* is the *indirect result* of the same illegal act. The *fruit of the poisonous tree* is at least once removed from the illegally seized evidence, but it is equally inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence taints all evidence subsequently obtained. [*People vs. Samontanez (2000)*]

Violations of the Miranda rights render inadmissible only the extrajudicial confession or admission made during the custodial investigation. The admissibility of other evidence is not affected even if obtained or taken in the course of the custodial investigation. [*People v. Malimit (1996)*]

Extrajudicial Confession by a person arrested, detained or under custodial investigation

- (1) Shall be in writing and
- (2) signed in the presence of his counsel or in the latter's absence:
 - (a) upon a valid waiver and
 - (b) in the presence of any of the following:
 - any of the parents
 - older brother and sisters
 - spouse
 - municipal mayor
 - municipal judge
 - district school supervisor
 - priest or minister of the gospel as chosen by him

Otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding. [*Sec 2d, RA 7438*]

In the absence of a valid waiver, any confession obtained from the appellant during the police custodial investigation relative to the crime, including any other evidence secured by virtue of the said confession is inadmissible in evidence even if the same was not objected to during the trial by the counsel of the appellant. [*People vs. Samontanez (2000)*]

C. WAIVER

What can be waived?

The right to remain silent and the right to counsel.

What cannot be waived?

The right to be given the Miranda warnings.

Rule on Waiver [Art. III, Sec. 12]

- (1) Must be in writing
- (2) Made in the presence of counsel

RA 7438, Rights of Persons under Custodial Investigation

Section 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers.

- (e) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.
- (e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.

Burden of Proving Voluntariness of Waiver [*People v. Jara, 1986*]

Presumption: against the waiver.

Burden of proof: lies with the prosecution. Prosecution must prove with strongly convincing evidence to the satisfaction of the Court that indeed the accused:

- (1) Willingly and voluntarily submitted his confession and
- (2) Knowingly and deliberately manifested that he was not interested in having a lawyer assist him during the taking of that confession.

XVI. Rights of the Accused

- (1) No person shall be held to answer for a criminal offense without due process of law.
- (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable. [Art. III, Sec. 14]

Section 1. Rights of accused at trial. – In all criminal prosecutions, the accused shall be entitled to the following rights:

- (a) To be presumed innocent until the contrary is proved beyond reasonable doubt.
- (b) To be informed of the nature and cause of the accusation against him.
- (c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification.

The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat.

When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

- (d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.
- (e) To be exempt from being compelled to be a witness against himself.
- (f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or cannot with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.
- (g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.
- (h) To have speedy, impartial and public trial.
- (i) To appeal in all cases allowed and in the manner prescribed by law. [*Rule 115, Rights of the Accused, Rules of Court*]

A. CRIMINAL DUE PROCESS

Requisites

[*People vs. Vera (1937)*]

- (a) Accused is heard by a court of competent jurisdiction;
- (b) Accused is proceeded against under the orderly process of law;
- (c) Accused is given notice and opportunity to be heard;
- (d) Judgment rendered is within the authority of a constitutional law. [*Mejia v. Pamaran, 1988*]

B. BAIL

Art. III, Sec. 13. All persons, except those charged with offenses punishable by reclusion perpetua when the evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Rule 114, Sec. 1, ROC. Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as may be required.

Purpose: To guarantee the appearance of the accused at the trial, or whenever so required by the court. The amount should be high enough to assure the presence of the accused when required but no higher than is reasonably calculated to fulfill this purpose. To fix bail at an amount equivalent to the civil liability of which petitioner is charged is to permit the impression that the amount paid as bail is an exaction of the civil liability that accused is charged of; this we cannot allow because bail is not

intended as a punishment, nor as a satisfaction of civil liability which should necessarily await the judgment of the appellate court. [*Yap vs Court of Appeals (2001)*]

Basis of right: Presumption of innocence

Who May Avail

General rule: All persons under custody of the law

Exceptions:

- (1) Those charged with capital offense when evidence of guilt is strong

Since the evidence (rebellion) in this case is hearsay, the evidence of guilt is not strong, bail is allowed. [*Enrile v. Perez (En Banc Resolution, 2001)*]

- (2) Military men [*People v Reyes, 212 SCRA 401*]

Military men who participated in failed coup d'état because of their threat to national security. [*Comendador v. De Villa (1991)*]

When Available

General rule: From the very moment of arrest (which may be before or after the filing of formal charges in court) up to the time of conviction by final judgment (which means after appeal).

No charge need be filed formally before one can file for bail, so long as one is under arrest. [*Heras Teehankee v. Rovica (1945)*]

Arraignment of the accused is not essential to the approval of the bail bond. When bail is authorized, it should be granted before arraignment. Otherwise the accused may be precluded from filing a motion to quash. Also, the court will be assured of the presence of the accused at the arraignment precisely by granting bail and ordering his presence at any stage of the proceeding. [*Lavides v. CA (2000)*]

Rule 114 Sec. 18. Notice of application to the prosecutor.— In the application for bail under Section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation.

Exceptions:

- (1) When charged with an offense punishable by reclusion perpetua.
- (2) Traditionally, the right to bail is not available to the military, as an exception to the bill of rights. [*People v. Reyes, 212 SCRA 402*]

In this jurisdiction, before a judge may grant an application for bail, whether bail is a matter of right or discretion, the prosecutor must be given reasonable notice of hearing or he must be asked to submit his recommendation. [*Taborite vs. Sollesta, (2009)*]

The prosecution must first be accorded an opportunity to present evidence. It is on the basis of such evidence that judicial discretion is exercised in determining whether the evidence of guilt of the accused is strong. In other words, discretion must be exercised regularly, legally and within the confines of procedural due process, that is, after evaluation of the evidence submitted by the prosecution. [*Taborite vs. Sollesta, supra*]

Bail as a Matter of Right versus Matter Of Discretion

<i>Matter of Right</i>	<i>Matter of Discretion</i>
Bail is a matter of right in all cases not punishable by reclusion perpetua.	<p>(1) In case the evidence of guilt is strong. In such a case, according to <i>People v. San Diego</i> (1966), the court's discretion to grant bail must be exercised in the light of a summary of the evidence presented by the prosecution.</p> <p>Thus, the order granting or refusing bail must contain a summary of the evidence for the prosecution followed by the conclusion on whether or not the evidence of guilt is strong (Note: it is not the existence of guilt itself which is concluded but the strength of the probability that guilt exists).</p> <p>(2) In extradition proceedings.</p> <p>Extradition courts do not render judgments of conviction or acquittal so it does not matter WON the crimes the accused is being extradited for is punishable by reclusion perpetua [<i>US Government v. Judge Puruganan and Mark Jimenez</i> (2002)]</p>

Standards for Fixing Bail

Rule 114. Sec. 9. Amount of bail; guidelines.

– The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstance of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that the accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required.

Discretion is with the court called upon to rule on the question of bail. We must stress, however, that where conditions imposed upon a defendant seeking bail would amount to a refusal thereof and render nugatory the constitutional right to bail, we will not hesitate to exercise our supervisory powers to provide the required remedy. [*Dela Camara v. Enage* (1971)]

Duties of a trial judge in case an application for bail is filed [*Cortes vs. Cabal* (1997)]:

- (1) In all cases, whether bail is a matter of right or of discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 as amended);
- (2) Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; (Section 7 and 8)

- (3) Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;
- (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond (Section 19) Otherwise petition should be denied.

C. PRESUMPTION OF INNOCENCE

The requirement of proof beyond reasonable doubt is a necessary corollary of the constitutional right to be presumed innocent. [*People v. Dramavo (1971)*]

The accused cannot present evidence before the prosecution does so, even if the accused pleads guilty. It violates the presumption of innocence. [*Alejandro v. Pepito (1980)*]

The presumption of regularity (in official duties) cannot by itself prevail over the presumption of innocence of the accused. But where it is not the sole basis for conviction, the presumption of regularity of performance of official functions may prevail over the constitutional presumption of innocence. [*People v. Acuram (2000)*]

Equipoise Rule

Where the evidence adduced by the parties is evenly balanced, the constitutional presumption of innocence should tilt the balance in favor of the accused. [*Corpuz v. People (1991)*]

In order that circumstantial evidence may warrant conviction, the following requisites must concur:

- (a) There is more than one circumstance
- (b) The facts from which the inferences are derived are proven
- (c) The combination of all the circumstances is such as to produce conviction beyond reasonable doubt. [*People v. Bato, G.R. No. 113804, January 16, 1998*]

D. RIGHT TO BE HEARD

Art. III, Sec 14 (2). In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

Art. III, Sec. 12. Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

It means the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause of the defense and acts accordingly. It is an efficient and truly decisive legal assistance, and not simply a perfunctory representation. [*People v. Bermas, G.R. No. 120420, April 21, 1999*]

The right of the accused to present evidence is guaranteed by no less than the Constitution itself. Article III, Section 14(2) thereof, provides that in all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel. This constitutional right includes the right to present evidence in one's defense, as well as the right to be present and defend oneself in person at every stage of the proceedings. Stripping the accused of all his pre-assigned trial dates constitutes a patent denial of the constitutionally guaranteed right to due process. [*Villareal vs. People (2012)*]

E. ASSISTANCE OF COUNSEL

RA 7438. Sec. 2. Rights of Persons Arrested, Detained or Under Custodial Investigation; Duties of Public Officers. –

(a) Any person arrested detained or under custodial investigation shall at all times be assisted by counsel;

Elements of the Right to Counsel:

- (a) Court's duty to inform the accused of right to counsel before being arraigned;
- (b) It must ask him if he desires the services of counsel;
- (c) If he does, and is unable to get one, the Court must give him one; if the accused wishes to procure private counsel, the Court must give him time to obtain one.
- (d) Where no lawyer is available, the Court may appoint any person resident of the province and of good repute for probity and ability.

F. RIGHT TO BE INFORMED

Procedural due process requires that the accused must be informed why he is being prosecuted and what charge he must meet. [*Vera v. People, supra*]

Note: Description, not designation of offense, is controlling

G. RIGHT TO SPEEDY, IMPARTIAL AND PUBLIC TRIAL

Art. III, Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Art. III, Sec. 3. Civilian authority is, at all times, supreme over the military. xxx

RA 8493, Sec. 17. Act not a bar to provision on speedy trial in the Constitution – No provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of the right to speedy trial guaranteed by Section 14(2), Article III, of the 1987 Constitution.

Impartial Trial

A civilian cannot be tried by a military court so long as the civil courts are open and operating, even during Martial Law. [*Olague v. Military Commission (1987)*]

Dismissal based on the denial of the right to speedy trial amounts to an acquittal. [*Acevedo v. Sarmiento (1970)*]

Note: RA 8493 provides a 30-day arraignment within the filing of the information or from the date the accused appeared before the court; trial shall commence 30 days from the arraignment, as fixed by the court. The entire trial period shall not exceed 180 days, except as otherwise authorized by the SC Chief Justice.

Availability

- (1) When proceeding is attended by vexatious, capricious and oppressive delays
- (2) When unjustified postponements of the trial are asked for and secured
- (3) When without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. [*dela Rosa v. Court of Appeals, 253 SCRA 499; Tai Lim v. Court of Appeals, G.R. No. 131483, October 26, 1999*]

Unreasonable delay weighed by ff factors:

- (1) Length of delay
- (2) Reason for delay
- (3) Assertion/failure to assert right by the accused
N.B. Failure to assert means waiver of privilege.
- (4) Prejudice caused by the delay [*Roquero v. The Chancellor of UP Manila*]

RA 8493 is a means of enforcing the right of the accused to a speedy trial. The spirit of the law is that the accused must go on record in the attitude of demanding a trial or resisting delay. [*Uy v. Hon. Adriano, G.R. No. 159098, October 27, 2006*]

When right not available: The right to speedy trial cannot be invoked where to sustain the same would result in a clear denial of due process to the prosecution. [*Uy v. Hon. Adriano, G.R. No. 159098, October 27, 2006*]

Rationale of right to speedy trial:

- (1) To prevent oppressive pre-trial incarceration,
- (2) To minimize anxiety and concern of the accused,
- (3) To limit the possibility that the defense will be impaired.

H. RIGHT TO CONFRONTATION

This is the basis of the right to cross-examination.

Two-fold purpose:

- (1) To afford the accused an opportunity to test the testimony of witnesses by cross-examination
- (2) To allow the judge to observe the deportment of witnesses. [*Go, et al. v. The People of the Philippines and Highdone Company, Ltd., et al., (2012)*]

Inadmissibility for lack of right to confrontation:

- (1) Testimony of a witness who has not submitted himself to cross examination
- (2) Affidavits of witnesses who are not presented during the trial, hence not subjected to cross examination– hearsay, [*Cariago v. Court of Appeals, G.R. No. 143561, June 6, 2001*]

The Court agrees that the right to cross-examine is a constitutional right anchored on due process. It is a statutory right found in Section 1(f), Rule 115 of the Revised Rules of Criminal Procedure which provides that the accused has the right to confront and cross-examine the witnesses against him at the trial. However, the right has always been

understood as requiring not necessarily an actual cross-examination but merely an opportunity to exercise the right to cross-examine if desired. What is proscribed by statutory norm and jurisprudential precept is the absence of the opportunity to cross-examine. The right is a personal one and may be waived expressly or impliedly. [*People vs. Escote Jr. (2003)*]

The task of recalling a witness for cross examination is, in law, imposed on the party who wishes to exercise said right. This is so because the right, being personal and waivable, the intention to utilize it must be expressed. Silence or failure to assert it on time amounts to a renunciation thereof. Thus, it should be the counsel for the opposing party who should move to cross-examine plaintiffs witnesses [*Fulgado vs. Court of Appeals et. al., (1990)*].

Rule on Examination of a Child Witness [AM No. 004-07-SC]

The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.

Compulsory Process

- (1) Right to Secure Attendance of Witness
- (2) Right to Production of Other Evidence

Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition. [*Caamic v. Galapon, 237 SCRA 390*]

Before a subpoena *duces tecum* may issue, the court must first be satisfied that the following **requisites** are present:

- (a) The books, documents or other things requested must appear *prima facie* relevant to the issue subject of the controversy (**test of relevancy**), and
- (b) Such books must be reasonably described by the parties to be readily identified (**test of definiteness**). [*Roco v. Contreras, G.R. No. 158275, June 28, 2005*]

I. TRIAL IN ABSENTIA

I.1 WHEN CAN TRIAL IN ABSENTIA BE DONE

3 requisites:

- (a) Accused failed to appear for trial despite postponement and notice
- (b) Failure to appear is unjustified
- (c) After arraignment

If not then the right of the accused to be informed of the nature and cause of accusation against him will be impaired for lack of arraignment [*Borja v. Mendoza* (1977)]

Consequences: Waiver of right to cross-examine and present evidence [*Gimenez vs. Nazareno* (1988)]

I.2 WHEN PRESENCE OF THE ACCUSED IS A DUTY

- (1) Arraignment and Plea
- (2) During Trial, for identification
- (3) Promulgation of Sentence

Exception: Light offense → can be via counsel

Petitioner challenges the jurisdiction of military commissions to try him (for murder, illegal possession of firearms and for violation of the Anti-Subversion Act) arguing that he being a civilian, such trial during martial law deprives him of his right to due process.

An issue has been raised as to WON petitioner could waive his right to be present during trial.

On a 7-5 Voting: Seven justices voted that petitioner may waive his right to be present at *all* stages of the proceedings while five voted that this waiver is qualified, he cannot waive when he is to be identified.

I.3 TRIAL IN ABSENTIA

As a general rule, subject to certain exceptions, any constitutional or statutory right may be waived if such waiver is not against public policy.

Considering *Art IV, Sec 19, 1973 Constitution* (trial of a capital offense may proceed even in the absence of the accused) and the absence of any law specifically requiring his presence at all stages of his trial, there appears, no logical reason why petitioner, although he is charged with a capital offense, should be precluded from waiving his right to be present in the proceedings for the perpetuation of testimony, since this right was conferred upon him for his protection and benefit. [*Aquino vs. Military Commission* (1975)]

XVII. Writ of Habeas Corpus

Basis

Art. III, Sec. 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Definition

It is defined as a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, submit to, and receive whatever the court or judge awarding the writ shall consider in that behalf.

Suspension of the Privilege of the Writ

Art. VII, Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.

In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.

Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress.

The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public

safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

The Supreme Court may: 1) review, 2) in an appropriate proceeding; 3) filed by any citizen, 4) the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and 5) must promulgate its decision thereon within thirty days from its filing.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

Availability

- (1) A prime specification of an application for a writ of habeas corpus is involuntary restraint of liberty.
- (2) Voluntary restraint of liberty i.e. right of parents to regain custody of minor child even if the child is in the custody of a third person of her own free will. [*Sombong v. CA (1990)*]
- (3) Illegal arrest with supervening event when restraint of liberty is already by virtue of the complaint or information. [*Velasco v. CA (1995)*]
 - (a) The issuance of a judicial process preventing the discharge of the detained person.
 - (b) Another is the filing of a complaint or information for the offense for which the accused is detained. [*Section 4 of Rule 102*]
- (4) Where a sentence imposes punishment in excess of the power of the court to

impose, such sentence is void as to the excess. [*Gumabon v. Director of Prisons* (1971)]

Restraint of Liberty

Not only physical restraint but any restraint on freedom of action is sufficient i.e. (1) curtailed freedom of movement by the condition that he must get approval of respondents for any travel outside Metro Manila, (2) abridged liberty of abode because prior approval of respondent is required in case petitioner wants to change place of residence, (3) abridged freedom of speech due to prohibition from taking any interviews inimical to national security, and (4) petitioner is required to report regularly to respondents or their reps. [*Moncupa v. Enrile* (1986)]

This Court has held that a restrictive custody and monitoring of movements or whereabouts of police officers under investigation by their superiors is not a form of illegal detention or restraint of liberty [*Ampatuan vs. Macaraig* (2010)].

Restrictive custody is, at best, nominal restraint which is beyond the ambit of *habeas corpus*. It is neither actual nor effective restraint that would call for the grant of the remedy prayed for. It is a permissible precautionary measure to assure the PNP authorities that the police officers concerned are always accounted for. [*Ampatuan vs. Macaraig* (*supra*)].

Note: The fact that the party to whom the writ is addressed has illegally parted with the custody of a person before the application for the writ is no reason why the writ should not issue. [*Villavicencio v. Lukban* (1919)]

Test for valid suspension of the privilege of the writ: arbitrariness, not correctness

Conditions for valid suspension:

- (a) Presence of invasion, insurrection or rebellion
- (b) Public safety requires it [*Lansang v. Garcia* (1971)]

XVIII. Writs of Amparo, Habeas Data and Kalikasan

A. WRIT OF AMPARO

Sec. 1, The Rule on the Writ of Amparo. The petition for a writ of *amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

A.1 BASIS

The Supreme Court shall have the following powers: xxx (5) Promulgate rules concerning the protection and enforcement of constitutional rights, xxx. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. [Art. VIII, Sec. 5]

A.2 PETITION FOR WRIT

Form

The petition shall be signed and verified. [Sec. 5]

Contents

The petition shall allege the following:

- (1) The personal circumstances of the petitioner
- (2) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation
- (3) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with

the attendant circumstances detailed in supporting affidavits

- (4) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report

- (5) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission

- (6) The relief prayed for.

The petition may include a general prayer for other just and equitable reliefs. [Sec. 5]

Where to file

The petition may be filed on any day and at any time [Sec. 3]

<i>Filing</i>	<i>Enforceability</i>	<i>Returnable</i>
RTC of the place where the threat, act or omission was committed or any of its elements occurred	Anywhere in the Philippines	Before the issuing court or judge
Sandiganbayan or any of its justices	Anywhere in the Philippines	(1) Before the issuing court or any justice thereof; or (2) Any RTC of the place where the threat, act or omission was committed or any of its elements occurred
Court of Appeals or any of its justices		
SC or any of its justices	Anywhere in the Philippines	(1) Before the issuing court or any justice thereof; (2) Before the Sandiganbayan or CA or any of their justices; or (3) Any RTC of the place where the threat, act or omission was committed or any of its elements occurred

Docket fees: None [Sec. 4]

Return

Within 72 hours after service of the writ, the respondent shall file a verified written return together with supporting affidavits which shall, among other things, contain his defenses. A general denial is not allowed. [Sec. 9]

Hearing

Summary or court may call for a preliminary conference; given same priority as petition for habeas corpus. [Sec. 13]

Proof required: Substantial evidence

Defense:

- (1) Private individual – ordinary diligence
- (2) Public official – extraordinary diligence, no presumption of regularity of duties. [Sec. 17]

The Manalo brothers were abducted, detained, and tortured repeatedly by the military. After their escape, they filed a petition for the privilege of the Writ of *Amparo*. The Supreme Court granted the petition and held that there was a continuing violation of the Manalos' right to security.

As regards the relief granted, the Court held that the production order under the *Amparo* rule is different from a search warrant and may be likened to the production of documents or things under *Rule 27.1, ROC*. [Secretary of National Defense vs. Manalo (2008)]

B. WRIT OF *HABEAS DATA*

(See Previous Discussion)

The writ of *habeas data* is an independent and summary remedy designed to protect the image, privacy, honor, information, and freedom of information of an individual, and to provide a forum to enforce one's right to the truth and to informational privacy.

There must be a nexus between right to privacy and right to life, liberty and security.

Right To Informational Privacy v. Legitimate State Interest

The determination of whether the privilege of the writ of *habeas data*, being an extraordinary remedy, may be granted in this case entails a delicate balancing of the alleged intrusion upon the private life of Gamboa and the relevant state interest involved. [*Gamboa v. P/Supt. Marlou C. Chan, et al.*, (2012)]

C. WRIT OF *KALIKASAN*

Remedy against violation or threat of violation of constitutional right to a balanced and healthful ecology by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces

Who may file: Natural or juridical persons, NGO or public interest groups in behalf of persons whose right is violated.

Who has jurisdiction: Supreme Court or Court of Appeals.

Docket fees: None

When is writ issued?

Within three (3) days from the date of filing of the petition, if the petition is sufficient in form and substance

Return of Respondent

Within a non-extendible period of ten (10) days after service of the writ, the respondent shall file a verified return which shall contain all defenses; all defenses not raised are deemed waived.

Hearing

Preliminary conference; same priority as other writs (no more than 60 days).

Reliefs: Permanent cease and desist order, other reliefs.

XIX. Self-Incrimination Clause

A. SCOPE AND COVERAGE

Art. III, Sec. 17. No person shall be compelled to be a witness against himself.

Only applies to compulsory testimonial, and does not apply to material objects. [*Villaflor v. Summers* (1920)]

This right maybe invoked (by the said directors and officers of Philcomsat Holdings Corporation) only when the incriminating question is being asked, since they have no way of knowing in advance the nature or effect of the questions to be asked of them." The consolation is that when this power is abused, such issue may be presented before the courts. [*Sabio vs. Gordon* (2006)]

It refers therefore to the use of the *mental* process and the communicative faculties, and not to a merely physical activity.

If the act is physical or mechanical, the accused can be compelled to allow or perform the act, and the result can be used in evidence against him.

Examples:

- (1) Handwriting in connection with a prosecution for falsification is not allowed, [*Beltran v. Samson*, 53 Phil 570; *Bermudez vs. Castillo* (1937)]
- (2) Re-enactment of the crime by the accused is not allowed
- (3) The accused can be required to allow a sample of a substance taken from his body [*U.S. vs. Tan The* (1912)], or be ordered to expel the morphine from his mouth [*U.S. v. Ong Sio Hong* (1917)]
- (4) Accused may be made to take off her garments and shoes and be photographed [*People v. Otadura*, 96 Phil 244, 1950]; compelled to show her body for physical investigation to see if she is

pregnant by an adulterous relation [*Villaflor v. Summers* (1920)]

- (5) Order to give a footprint sample to see if it matches the ones found in the scene of the crime is allowed [*People v. Salas and People v. Sara*]

Foreign Laws

The privilege which exists as to private papers, cannot be maintained in relation to "records required by law to be kept in order that there may be suitable information of transactions which are the appropriate subjects of governmental regulation and the enforcement of restrictions validly established. [*Shapiro v. US* (1948)]

In recent cases, the US Supreme Court has struck down certain registration requirements that presented real and appreciable risk of self-incrimination. These involved statutes directed at inherently suspect groups in areas permeated by criminal statutes, a circumstance which laid the subjects open to real risk of self-incrimination. [*Bernas*]

The great majority of persons who file income tax returns do not incriminate themselves by disclosing their occupation. [*US v. Sullivan* (1927)]

B. APPLICATION

General Rule: The privilege is available in any proceedings, even outside the court, for they may eventually lead to a criminal prosecution.

Expanded Application:

- (1) Administrative proceedings with penal aspect i.e. medical board investigation. [*Pascual v. Board of Medical Examiners*(1969)], forfeiture proceeding [*Cabal v. Kapunan Jr.* (1962)]
- (2) Fact-Finding investigation by an *ad hoc* body [*Galman v. Pamaran* (1985)]

Effect of Denial of Privilege

Exclusionary Rule (*under Sec. 17, Art. III in relation to Sec. 12*): When the privilege against self-incrimination is violated outside of court (e.g. police), then the testimony, as already noted, is not admissible.

Ousted of Jurisdiction: When the privilege is violated by the Court itself, that is, by the judge, the court is ousted of its jurisdiction, all its proceedings, and even judgment are null and void. [*Chavez v. CA (1968)*]

C. IMMUNITY STATUTES

Transactional Immunity

Art. XIII, Sec. 18

The Commission on Human Rights shall have the following powers and functions: xxx

- (8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;

Use and Fruit of Immunity

"Use immunity" prohibits use of a witness' compelled testimony and its fruits in any manner in connection with the criminal prosecution of the witness.

"Transactional immunity" grants immunity to witness from prosecution for an offense to which his compelled testimony relates. [*Galman v. Pamaran (1985)*]

XX. Involuntary Servitude and Political Prisoners

Art. III, Sec. 18

- (1) No person shall be detained solely by reason of his political beliefs and aspirations.
- (2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Involuntary Servitude

Slavery and involuntary servitude, together with their corollary peonage, all denote "a condition of enforced, compulsory service of one to another." [*Hodges v. US (1906)* in *Rubi v. Provincial Board of Mindoro (1919)*]

A private person who contracts obligations of this sort toward the Army cannot, by law that we know of, either civil or military be compelled to fulfill them by imprisonment and deportation from his place of residence, we deem it wholly improper to sustain such means of compulsion which are not justified either by law or by the contract. [*In Re Brooks (1901)*]

Domestic services are always to be remunerated, and no agreement may subsist in law in which it is stipulated that any domestic service shall be absolutely gratuitous, unless it be admitted that slavery may be established in this country through a covenant entered into between interested parties. [*de los Reyes v. Alojado (1910)*]

A former court stenographer may be compelled under pain of contempt to transcribe stenographic notes he had failed to attend to while in service. xxx such compulsion is not the condition of enforced compulsory service referred to by the Constitution.

Fernando, J. concurring opinion:

The matter could become tricky should a stenographer stubbornly refuse to obey and the court insists on keeping him in jail. The detention could then become punitive and give rise to the issue of involuntary servitude. [*Aclaracion v. Gatmaitan* (1975)]

Political Prisoners

If the petitioners are political prisoners subject to the civil jurisdiction of ordinary courts of justice if they are to be prosecuted at all, the army has no jurisdiction, nor power, nor authority, from all legal standpoints, to continue holding them in restraint. They are entitled, as a matter of fundamental right, to be immediately released, any allegation as to whether the war was ended or not. [*Raquiza v. Bradford* (1945)]

Sec. 19 of CA No. 682 authorizes that the political prisoners in question "may be released on bail, even prior to the presentation of the corresponding information," and this may be done "existing provisions of law to the contrary notwithstanding." We must assume that the discretion granted must be construed in the sense that the same may be exercised in cases wherein it was not heretofore granted by law. And it is reasonable to assume that the discretion granted is to the effect that the People's Court may exercise jurisdiction to order the release on bail of political prisoners "even prior to the presentation of the corresponding information." [*Duran v. Abad Santos* (1945)]

XXI. Excessive Fines and Cruel and Inhuman Punishments

Art. III, Sec. 19. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

In this case the Court took into account, in lowering the penalty to *reclusion perpetua* of the accused most of whom were already death row convicts, the deplorable subhuman conditions of the National Penitentiary where the crime was committed. [*People v. dela Cruz* (1953)]

What is prohibited: Cruel and unusual punishment. Unusual punishment is not prohibited especially if it makes the penalty less severe.

The prohibition of cruel and unusual punishments is generally aimed at the form or character of the punishment rather than its severity in respect of duration or amount, and applies to punishments which public sentiment has regarded as cruel or obsolete, for instance, those inflicted at the whipping post, or in the pillory, burning at the stake, breaking on the wheel, disemboweling, and the like. Fine and imprisonment would not thus be within the prohibition. [*People vs. Dela Cruz* (*supra*)]

What is a cruel punishment?

- (1) Involves torture or lingering death [*Legarda v. Valdez (1902)*]
- (2) Not only severe, harsh or excessive but flagrantly and plainly oppressive
- (3) Wholly disproportionate to the nature of the offense as to shock the moral sense of the community [*People v. Estoista (1953)*]

Note: The constitutional limit must be reckoned on the basis of the nature and mode of punishment measured in terms of physical pain

RA 9346 (June 24, 2006): An Act Prohibiting the Imposition of Death Penalty in the Philippines

Sec. 1. The imposition of the penalty of death is hereby prohibited. Accordingly, R.A. No. 8177, otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. R.A. No. 7659, otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

The import of the grant of power to Congress to restore the death penalty **requires:**

- (a) that Congress define or describe what is meant by heinous crimes
- (b) that Congress specify and penalize by death, only crimes that qualify as heinous in accordance with the definition or description set in the death penalty bill and/or designate crimes punishable by reclusion perpetua to death in which latter case, death can only be imposed upon the attendance of circumstances duly proven in court that characterize the crime to be heinous in accordance with the definition or description set in the death penalty bill
- (c) that Congress, in enacting this death penalty bill be singularly motivated by "compelling reasons involving heinous crimes."

For a death penalty bill to be valid, *Sec. 19(1)* does not require that there be a positive manifestation in the form of higher incidence of crime first perceived and statistically proven. Neither does the said provision require that the death penalty be resorted to as a last recourse when all other criminal reforms have failed to abate criminality in society. [*People v. Echegaray (1997)*]

Sec 19 (2) as worded, already embodies constitutional authorization for the Commission on Human Rights to take action in accordance with *Art XIII, Sec 18*. There is a command addressed to Congress to pass whatever civil or penal legislation might be required for the subject. [*Bernas*]

XXII. Non-Imprisonment for Debts

Art. III, Sec. 20. No person shall be imprisoned for debt or non-payment of a poll tax.

Scope

- (1) **Debt** – any civil obligation arising from a contract. It includes even debts obtained through fraud since no distinction is made in the Constitution. [*Ganaway v. Quillen (1922)*]
- (2) **Poll Tax** – a specific sum levied upon any person belonging to a certain class without regard to property or occupation (e.g. community tax).

A tax is not a debt since it is an obligation arising from law. Hence, its non-payment maybe validly punished with imprisonment.

Santos refused to pay 16 pesos for Ramirez's *cedula* as payment for what Santos owed Ramirez. Thus, Ramirez was convicted and imprisoned for *estafa*. Upon demand for release, the Court held that the imprisonment was correct since it was for *estafa* and not involuntary servitude or imprisonment for debt. [*Ramirez v. de Orozco (1916)*]

In admitting such a "criminal complaint" that was plainly civil in aspects from the very face of the complaint and the "evidence" presented, and issuing on the same day the warrant of arrest, respondent grossly failed to perform his duties properly – which in this instance was to dismiss the complaint outright since it is elementary that non-payment of an indebtedness is not a criminal act, much less *estafa*; and that no one may be criminally charged and punished for non-payment of a loan of a sum of money. [*Serafin vs. Lindayag (1975)*]

The obligation incurred by the debtor, as shown by the receipt, was to pay an ordinary contractual obligation. Since the guardianship proceeding was civil in nature, the Court did not allow enforcement of the civil obligation by an order of imprisonment. [*In re Tamboco (1917)*]

No person may be imprisoned for debt in virtue of a civil proceeding. [*Makapagal v. Santamaria (1930)*]

A person may be imprisoned as a penalty for a crime arising from a contractual debt and imposed in a proper criminal proceeding. Thus, the conversion of a criminal fine into a prison term does not violate the provision because in such a case, imprisonment is imposed for a monetary obligation arising from a crime. [*Ajeno v. Judge Insero (1976)*]

XXIII. Double Jeopardy

Art. III, Sec. 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Termination of Jeopardy

- (1) By acquittal
- (2) By final conviction
- (3) By dismissal without express consent of accused
- (4) By "dismissal" on the merits

A. REQUISITES

- (a) Court of competent jurisdiction;
- (b) A Complaint/Information sufficient in form and substance to sustain a conviction;
- (c) Arraignment and plea by the accused;
- (d) Conviction, acquittal, or dismissal of the case without the express consent, of the accused. [*Rule 117, Sec. 7; People v. Obsania (1968)*]

When Subsequent Prosecution Is Barred

- (1) Same offense
- (2) Attempt of the same offense
- (3) Frustration of the same offense
- (4) Offense necessarily included in the 1st offense (All the elements of the 2nd constitute some of the elements of the 1st offense)
- (5) Offense that necessarily includes the 1st offense (All the elements of the 1st constitute some of the elements of the 2nd offense)

Exceptions:

- (1) The graver offense developed due to "supervening facts" arising from the same act or omission constituting the former charge.
- (2) The facts constituting the graver charge became known or were discovered only after the filing of the former complaint or information.
- (3) The plea of guilty to the lesser offense was made without the consent of the fiscal and the offended party.

When Defense of Double Jeopardy Is Available

- (1) Dismissal based on insufficiency of evidence;
- (2) Dismissal because of denial of right to speedy trial;
- (3) Accused is discharged to be a state witness.

When the State Can Challenge the Acquittal of the Accused or the Imposition of a Lower Penalty by a Trial Court

- (1) Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, tantamount to a deprivation of due process;
- (2) Where there is a finding of mistrial;
- (3) Where there has been a grave abuse of discretion. [*Villareal v. People (2012)*]

B. MOTIONS FOR RECONSIDERATION AND APPEALS

The accused cannot be prosecuted a second time for the same offense and the prosecution cannot appeal a judgment of acquittal. [*Kepner v. US (1904)*]

Provided, that the judge considered the evidence, even if the appreciation of the evidence leading to the acquittal is erroneous, an appeal or motion for reconsideration by the prosecution will not be allowed. [*People v. Judge Velasco (2000)*]

No error, however, flagrant, committed by the court against the state, can be reserved by it for decision by the Supreme Court when the defendant has once been placed in jeopardy and discharged even though the discharge was the result of the error committed. [*People v. Ang Cho (1945) citing State v. Rook*]

A mere verbal dismissal is not final until written and signed by the judge. [*Rivera, Jr. v. People (1990)*]

When an accused appeals his conviction, he waives his right to the plea of double jeopardy. If the accused had been prosecuted for a higher offense but was convicted for a lower offense, he has technically been acquitted of the higher offense. His appeal would give the Court the right to impose a penalty higher than that of the original conviction imposed on him. [*Trono v. US (1905)*]

Double jeopardy provides three related protections:

- (1) Against a second prosecution for the same offense after acquittal;
- (2) Against a second prosecution for the same offense after conviction; and
- (3) Against multiple punishments for the same offense. [*People v. Dela Torre, G.R. No. 1379-58, April 11, 2002*]

C. DISMISSAL WITH CONSENT OF ACCUSED

Rule 117, Sec. 8, par. 1. Provisional dismissal. — A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

When the case is dismissed other than on the merits, upon motion of the accused personally, or through counsel, such dismissal is regarded as “with express consent of the accused”, who is therefore deemed to have waived the right to plea double jeopardy.

XXIV. *Ex Post Facto* and Bills Of Attainder

Art. III, Sec. 22. No *ex post facto* law or bill of attainder shall be enacted.

A. EX POST FACTO LAWS

- (1) Makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action.
- (2) Aggravates a crime or makes it greater than when it was committed.
- (3) Changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed.
- (4) Alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant. [*Mekin v. Wolfe, 1903*]
- (5) Assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful.
- (6) Deprives a person accused of a crime of some lawful protection of a former conviction or acquittal, or a proclamation of amnesty. [*In re Kay Villegas Kami (1970)*]

The prohibition applies only to criminal legislation which affects the substantial rights of the accused. [*Phil. National Bank v. Ruperto (1960)*]

It applies to criminal procedural law prejudicial to the accused. [*US v. Gomez (1908)*]

It is improper to apply the prohibition to an executive proclamation suspending the privilege of the writ of *habeas corpus*. [*Montenegro v. Castañeda (1952)*]

B. BILLS OF ATTAINDER

A bill of attainder is a legislative act which inflicts punishment without judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. [*Cummings v. Missouri* (1867)]

It is a general safeguard against legislative exercise of the judicial function, or trial by legislature. [*US v. Brown* (1965)]

RA 1700 which declared the Communist Party of the Philippines a clear and present danger to Philippine security, and thus prohibited membership in such organization, was contended to be a bill of attainder. Although the law mentions the CPP in particular, its purpose is not to define a crime but only to lay a basis or to justify the legislative determination that membership in such organization is a crime because of the clear and present danger to national security. [*People v. Ferrer* (1972)]

POLITICAL LAW

LAW ON PUBLIC OFFICERS

A. General Principles

1. CONCEPT AND APPLICATION

A. DEFINITION

The right, authority and duty, created and conferred by law, by which, for a given period either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government, to be exercised by that individual for the benefit of the public. [*Fernandez v. Sto. Tomas*, G.R. No. 116418 (1995), quoting *MECHEM*]

B. BREAKDOWN OF THE DEFINITION

Nature	Right, authority, and duty
Origin	Created and conferred by law
Duration	For a given period, either: (1) Fixed by law, or (2) Enduring at the pleasure of the appointing power
Nature of the Exercise (of the right, authority, and duty)	An individual is invested with some portion of the sovereign functions of government
Object of the Exercise	For the benefit of the public

C. BASIC CONSTITUTIONAL PRINCIPLES

The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them. [*Sec. 1, Art. II, Constitution*]

- This is the central or core provision for the law on public officers.
- The second sentence, in particular, is the foundation of the law on public accountability.
- **A public officer exercises delegated powers:** A public official exercises

power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such, there is no presumption that they are empowered to act, there must be a delegation of such authority, either express or implied. In the absence of a valid grant, they are devoid of power. [*Villegas v. Subido*, G.R. No. 31711 (1971)]

Sec. 1, Art. XI, Constitution. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

- The provision embodies the nature of a public office as a public trust, and not as a property right.

D. ESSENTIAL ELEMENTS OF A PUBLIC OFFICE:

1. Created by the Constitution, law, or by authority of law.
2. A delegation of some portion of the sovereign power.
3. Powers and functions are defined by the Constitution, law, or legislative authority.
4. Duties pertaining thereto are performed independently, without control of a superior power.
5. Continuing and permanent in nature. [*DE LEON*]

Notes on the mode of creation (first element)

A public office must be created by the (a) Constitution, (b) national legislation, or (c) municipal or subordinate legislation, via authority conferred by the Legislature

Notes on the characteristics of a public office (second to fifth elements)

The delegation of a portion of the sovereign powers of government necessarily means that the powers are to be exercised for the benefit of the public.

- This delegation is the most important element of a public office and distinguishes it from private employment or a contract. [*Laurel v. Desierto*, G.R. No. 145368 (2002)]
- The sovereign powers delegated are either legislative, executive or judicial in nature. [*Id.*]

Powers conferred and duties imposed upon the office must be defined, directly or impliedly (e.g. by necessary implication).

- Hence, there may be certain GOCCs which, though created by law, are not delegated with a portion of the sovereign powers of the government (i.e. those that are purely proprietary in nature), and thus may not be considered as a public office.

General Rule: Duties must be performed independently and without the control of a superior power other than the law.

- *Exception:* Duties of an inferior or subordinate office that was created or authorized by the Legislature and which inferior or subordinate office is placed under the general control of a superior office or body.

On permanence and continuity (or “unhindered performance”):

- Permanence and continuity are not indispensable.
- Hence, even if the tenure of the Chair of the National Centennial Commission (NCC) is merely temporary, it is a public office. The NCC was an ad-hoc body that was created by an Executive Order to

perform an executive and sovereign function—to coordinate the celebrations of the Philippine Centennial. [*Laurel v. Desierto* (2002)]

- While salary is a usual criterion for determining the nature of a position, it is not a necessary condition. The material factor was the delegation of sovereign functions. [*Id.*]
- While the Court has previously held that a town fiesta was of a proprietary nature, a town fiesta cannot compare to the National Centennial Celebrations, which are nation-wide. There is no hard and fast rule for determining the nature of an undertaking or function. [*Id.*]
- Moreover, certain public offices exist only for a limited period, e.g. Election Board of Canvassers.

2. CHARACTERISTICS OF A PUBLIC OFFICE

A. PUBLIC OFFICE V. PUBLIC EMPLOYMENT

Public employment is broader than public office. All public office is public employment, but not all public employment is a public office. Public employment as a position lacks either one or more of the foregoing elements of a public office. It is created by contract rather than by force of law. [DE LEON]

B. PUBLIC OFFICE V. CONTRACT

<i>Public Office</i>	<i>Contract</i>
<i>How Created</i>	
Incident of sovereignty. Sovereignty is omnipresent.	Originates from will of contracting parties.
<i>Object</i>	
To carry out the sovereign as well as governmental functions affecting even persons not bound by the contract.	Obligations imposed only upon the persons who entered into the contract.
<i>Subject Matter</i>	
A public office embraces the idea of tenure, duration, continuity, and the duties connected therewith are generally continuing and permanent.	Limited duration and specific in its object. Its terms define and limit the rights and obligations of the parties, and neither may depart therefrom without the consent of the other.
<i>Scope</i>	
Duties are generally continuing and permanent.	Duties are very specific to the contract.
<i>Where duties are defined</i>	
The law.	Contract.

C. PUBLIC OFFICE IS NOT PROPERTY

A public office is not the property of the public officer within the meaning of the due process clause of the non-impairment of the obligation of contract clause of the Constitution.

- **It is a public trust/agency:** A public office is not property within the constitutional guaranties of due process. As public officers are mere agents and not rulers of the people, no man has a proprietary or contractual right to an office. [*Cornejo v. Gabriel*, G.R. No. 16887 (1920)]
- **It is personal:** Public office being personal, the death of a public officer terminates his right to occupy the

contested office and extinguishes his counterclaim for damages. His widow and/or heirs cannot be substituted in the counterclaim suit. [*Abeja v. Tañada*, G.R. No. 112283 (1994)]

D. NO VESTED RIGHT IN A PUBLIC OFFICE

General Rule: Public office is not property under the due process clause. There is no vested right to a public office.

Exception: Public office is *analogous* to property in a limited context and due process may be invoked when the dispute concerns one's constitutional right to security of tenure. [*Lumiqued v. Exevea*, G.R. No. 117565 (1997)]

N.B. Security of tenure means that the public officer cannot be removed without cause [see *Sec. 2(2), Art. IX-B, 1987 Constitution*] and due process [as required by jurisprudence].

3. CREATION, MODIFICATION AND ABOLITION OF PUBLIC OFFICE**A. CREATION OF PUBLIC OFFICE**

Modes of Creation of Public Office:

- (1) By the Constitution;
- (2) By statute / law; or
- (3) By a tribunal or body to which the power to create the office has been delegated.

How a Public Office is Created

General Rule: The creation of a public office is primarily a legislative function.

Exception: Where the office is created by the Constitution itself.

The Sandiganbayan is not a constitutional court (or public office) but a constitutionally-mandated court. It was created by statute and not the Constitution, hence Congress may limit its powers and jurisdiction. [See *Garcia v. Sandiganbayan*, G.R. 114135 (1994)]

N.B. The power to create a public office may be delegated by Congress, subject to the requirements of a valid delegation of legislative powers.

The delegation is limited by the Constitution and the relevant statute. Hence, the president cannot deprive courts of jurisdiction by requiring administrative appeals prior to court action when the statute does not provide for that limitation. This is because the power to apportion jurisdiction is exclusively within the powers of Congress. [See *UST v. Board of Tax Appeals*, G.R. No. 5701 (1953)]

Methods of Organizing Public Offices

Method	Composition	Efficiency
<i>Single-head</i>	There is one head assisted by subordinates.	Swifter decision and action but decisions might be hastily made
<i>Board System</i>	There is a collegial body for formulating policies and implementing programs.	Mature studies and deliberations but may be slow in responding to issues and problems

B. MODIFICATION AND ABOLITION OF PUBLIC OFFICE

General Rule: The power to create an office includes the power to modify or abolish it. (Hence, the power to modify or abolish an office is also primarily legislative.)

Exception: Where the Constitution prohibits such modification/abolition.

Abolishing an office also abolishes unexpired term: The legislature's abolition of an office (e.g. a court) also abolishes the unexpired term. The legislative power to create a court carries with it the power to abolish it. [*Ocampo v. Sec. of Justice*, G.R. No. 7910 (1955)]

4. WHO ARE PUBLIC OFFICERS

A. WHO ARE PUBLIC OFFICERS

Generally, one who holds a public office. [DE LEON] "Public official" is ordinarily synonymous with "public officer." [*Id.*]

"Public officer" has also been defined by statutes. Note that the statutory definitions below are not all-encompassing, and apply primarily with respect to the respective statutes themselves (e.g. the definition of "public officers" in the Revised Penal Code is most relevant with regard to the provisions of the Revised Penal Code).

i. Under R.A. No. 3019

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph. [Sec. 2(b), R.A. No. 3019 (*Anti-Graft and Corrupt Practices Act*)]

- "Government" includes "the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches." [Sec. 2(a), R.A. No. 3019]

ii. Under the Revised Penal Code

Who are public officers. - For the purpose of applying the provisions of this and the preceding titles of this book, any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer. [Art. 203, *Revised Penal Code*]

- The definition includes temporary employees for as long as they perform public functions. Hence, a laborer temporarily in charge of issuing summons and subpoenas for

traffic violations in a judge's sala may be convicted for bribery under the Revised Penal Code. [*People v. Maniego*, G.R. No. 2971, Apr. 20, 1951]

owned by the Government, its funds were private funds because the Court found that it was not imbued with governmental powers. [*Id.*]

iii. Under the Admin. Code of 1987

(14) "Officer" as distinguished from "clerk" or "employee", refers to a person whose duties, not being of a clerical or manual nature, involves the exercise of discretion in the performance of the functions of the government. When used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, "officer" includes any government employee, agent or body having authority to do the act or exercise that function.

(15) "Employee" when used with reference to a person in the public service, includes any person in the service of the government or any of its agencies, divisions, subdivisions or instrumentalities.

[Sec. 2, Introductory Provisions, Admin. Code]

B. WHO ARE NOT PUBLIC OFFICERS

Generally, persons holding offices or employment which are not public offices, i.e. those missing one of the essential elements, *supra*.

Examples: The following are not public officers:

- (1) A concession forest guard, even when appointed by a government agency, if such appointment was in compliance with a requirement imposed by an administrative regulation on the lumber company who was also mandated to pay the guard's salaries. [*Martha Lumber Mill v. Lagradante*, G.R. No. 7599 (1956)]
Rationale: There was no public office in this case. The Court further noted that the appointment by the government was only done to ensure the faithful performance of the guard's duties. [*Id.*]
- (2) A company cashier of a private corporation owned by the government. [See *Tanchoco v. GSIS* (1962)]
Rationale: Even if the Manila Railroad Company was

5. CLASSIFICATION OF PUBLIC OFFICES AND PUBLIC OFFICERS

<i>Creation</i>	Constitutional
	Statutory
<i>Public Body Served</i>	National
	Local
<i>Department of government to which their functions pertain</i>	Legislative
	Executive
	Judicial
<i>Nature of functions</i>	Civil
	Military
<i>Exercise of Judgment or Discretion</i>	Discretionary
	Ministerial
<i>Legality of Title to office</i>	De Jure
	De Facto
<i>Compensation</i>	Lucrative
	Honorary

B. Modes of Acquiring Title to Public Office

- a. Election
- b. Appointment
- c. Others:
 - i. Succession by operation of law
 - ii. Direct provision of law

Generally, the two modes of acquiring title to public office are (1) election and (2) appointment. [*DE LEON*]

- **Election:** The choice or selection of candidates to public office by popular vote through the use of the ballot. [*Rulloda v. COMELEC, G.R. No. 154198 (2003)*]
- **Appointment:** The act of designation by the officer, board, or body to whom that power has been delegated of the individual who is to exercise the powers and functions of a given office. [*See DE LEON*]
- However, a person may also acquire title to public office through two other means, namely
 - (1) succession by operation of law (when the office to which one succeeds is legally vacated) or
 - (2) by direct provision of law (such as when the office is validly held in an ex-officio capacity by a public officer).

C. Modes and Kinds of Appointment

1. NATURE AND CHARACTERISTICS OF APPOINTMENTS

A. APPOINTMENT IS A DISCRETIONARY POWER.

"Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred." [*Luego v. CSC, G.R. No. 69137 (1986)*]

Administrators of public officers, primarily the department heads should be entrusted with plenary, or at least sufficient, discretion. Their position most favorably determines who can best fulfill the functions of a vacated office. There should always be full recognition of the wide scope of a discretionary authority, unless the law speaks in the most mandatory and peremptory tone, considering all the circumstances. [*Reyes v. Abeleda, G.R. No. 25491 (1968)*]

Scope of discretion: The discretion of the appointing authority is not only in the choice of the person who is to be appointed but also in the nature and character of the appointment intended (i.e., whether the appointment is permanent or temporary).

Generally, a Political Question: Appointment is generally a political question involving considerations of wisdom which only the appointing authority can decide.

Exception: Appointments requiring confirmation by the Commission on Appointments. In such cases, the Commission on Appointments may review the wisdom of the appointment and has the power to refuse to concur with it even if the President's choice possessed all the qualifications prescribed by law. [*Luego v. CSC (1986)*]

Power of CSC to recall appointments does not include control of discretion: The CSC authority to recall an appointment which has been initially approved when it is shown that the same was issued in disregard of pertinent laws, rules and regulations. However, it does not have the power to recall an appointment on the ground that another person is better qualified. [See *Luego v. CSC* (1986)]

The promotion of the "next-in-rank" is not mandatory: While there is a preference for the next-in-rank in the Civil Service Law [see *Sec. 21(1)-(6), Bk. V, Admin. Code (Civil Service Law)*], it does not impose a "rigid or mechanistic formula" that requires the appointing power to select the more senior officer. Unless the law speaks in the most mandatory and peremptory tone, there should be full recognition of the wide scope of the discretionary authority to appoint. [Reyes v. Abeleda, G.R. No. 25491 (1968)]

There is no requirement that "must be filled by promotion, transfer, reinstatement, reemployment or certification, in that order. That would be to construe the provision not merely as a legislative prescription of qualifications but as a legislative appointment, repugnant to the Constitution. What [the law] does purport to say is that as far as practicable the person next in rank should be promoted, otherwise the vacancy may be filled by transfer, reinstatement, reemployment or certification, as the appointing power sees fit, provided the appointee is certified to be qualified and eligible." [Pineda v. Claudio, G.R. No. 29661 (1967)]

"Upon recommendation" is merely advisory: In cases of provincial and city prosecutors and their assistants, they shall be appointed by the President "upon the recommendation of the Secretary" [Sec. 10, P.D. No. 1275]. The phrase "upon recommendation of the Secretary of Justice" should be interpreted to be a mere advice. It is persuasive in character, but is not binding or obligatory upon the person to whom it is made. [Bermudez v. Torres, G.R. No. 131429 (1999)]

N.B. The Secretary of Justice is under the control of the President. The rule is different with respect to recommendations made by officers over whom the appointing power exercises no power of control, e.g. as the

recommendation by the Governor of a Province to the Secretary of the Department of Budget and Management in the appointment of a Provincial Budget Officer. In the said example, the recommendation by the Governor is a condition *sine qua non* for the validity of the appointment. [See *San Juan v. CSC*, G.R. No. 92299 (1991)]

Courts will act with restraint: Generally, as regards the power of appointment, courts will act with restraint. Hence, mandamus will not lie to require the appointment of a particular applicant or nominee.

Exceptions:

- (1) When there is grave abuse of discretion, prohibition or mandamus will lie. [See *Aytona v. Castillo*, G.R. No. 19313 (1962), on the midnight appointments of President Garcia.]
- (2) Where the palpable excess of authority or abuse of discretion in refusing to issue promotional appointment would lead to manifest injustice, mandamus will lie to compel the appointing authority to issue said appointments. [Pineda v. Claudio, G.R. No. 29661 (1967)]

B. APPOINTMENT IS GENERALLY AN EXECUTIVE FUNCTION.

General Rule: "Appointment to office is intrinsically an executive act involving the exercise of discretion." [Concepcion v. Paredes, G.R. 17539 (1921)]

Exceptions:

- (1) Congress may appoint its own officials and staff. [See *Spinger v. Government* (1928)]
- (2) When the Constitution vests the powers in another branch of the State (i.e. Judiciary, *Sec. 5(6), Art. VIII*) or an independent office (e.g. Constitutional Commissions, *Sec. 4, Art. IX-A*; Ombudsman, *Sec. 6, Art. XI*; Commission on Human Rights, *Sec. 18(10), Art. XIII*).

N.B. Mechem believes that when appointment is exercised by Congress, the courts, and similar non-executive bodies, the exercise is still an executive function.

The power to appoint may be granted by law to officials exercising executive functions. This is expressly sanctioned by the provision which holds that "Congress may, by law, vest the appointment of other officers lower in rank [...] in the heads of departments, agencies, commissions, or boards." [Sec. 16, Art. VII, Constitution]

- Congress cannot vest such power in officials not mentioned in the above provision, such as heads of bureaus. [DE LEON]
- The power of local chief executives to appoint local government employees under the Local Government Code is separately sanctioned in the power of Congress to "provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units." [Sec. 3, Art. X, Constitution]

Must be unhindered by Congress: The President's power to appoint under the Constitution should necessarily have a reasonable measure of freedom, latitude, or discretion in choosing appointees. [Cuyegkeng v. Cruz, G.R. No. 16263 (1960)]

"Congress can not either appoint the Commissioner of the Service, or impose upon the President the duty to appoint any particular person to said office. The appointing power is the exclusive prerogative

of the President, upon which no limitations may be imposed by Congress, except those resulting [1] from the need of securing the concurrence of the Commission on Appointments and [2] from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office." [Manalang v. Quitoriano, G.R. No. 6898 (1954)]

Legislative appointments: Legislative appointments are repugnant to the Constitution. [Pineda v. Claudio, G.R. No. 29661 (1967)]

- **Effectively legislative appointments also prohibited:** "When Congress clothes the President with the power to appoint an officer, it (Congress) cannot at the same time limit the choice of the President to only one candidate. [...] when the qualifications prescribed by Congress can only be met by one individual, such enactment effectively eliminates the discretion of the appointing power to choose and constitutes an irregular restriction on the power of appointment." [Flores v. Drilon (1993)] In this case, the law assailed provided that "for the first year of its operations from the effectivity of this Act, the mayor of the City of Olongapo shall be appointed [by the President] as the chairman and chief executive officer of the Subic Authority."
- N.B. This is not to be confused with the power of Congress to appoint its own staff and officials, *supra*.

C. APPOINTMENT V. DESIGNATION

	Designation	Appointment
Definition	Imposition of additional duties upon existing office.	Appointing authority selects an individual who will occupy a certain public office.
Extent of Powers	Limited	Comprehensive
Security of Tenure	No. The designation may be revoked at will. [Binamira v. Garucho, G.R. No. 92008 (1990)]	Yes
Abandonment of "Prior" Office	No. While assuming the designated functions or if the designation is revoked, the public officer may perform the functions of the "prior" office.	Yes. A public officer who later accepts even a temporary appointment terminates his relationship with his former office. [Romualdez III v. CSC (1991)]

2. CLASSIFICATION OF APPOINTMENTS

A. PERMANENT AND TEMPORARY

	<i>Permanent</i>	<i>Temporary</i>
<i>Includes (if appointment is by the President)</i>	(1) Regular appointments (i.e. while Congress is in session); and (2) Ad interim appointments.	Acting appointments.
<i>Eligibility Requirements</i>	Permanent appointees must be (1) eligible and (2) qualified. "A permanent appointment can issue only to a person who possesses all the requirements for the position to which he is being appointed, including the appropriate eligibility." [CSC v. <i>Darangina</i> , G.R. No. 167472 (2007)]	Generally, required. <i>However</i> , "in the absence of appropriate eligibles, [a person otherwise ineligible] may be appointed to it merely in a temporary capacity." [CSC v. <i>Darangina</i> (2007)]
<i>Subject to confirmation by the Commission on Appointments</i>	Yes, if confirmation by the CA is required for the office.	No, even when confirmation by the CA is required for the office. (e.g. Acting Secretaries of Executive Departments)
<i>Constitutional protection</i>	"No officer or employee of the civil service shall be removed or suspended except for cause provided by law." [Sec. 2(3), Art. IX-B]	"Temporary employees of the Government shall be given such protection as may be provided by law." [Sec. 2(6), Art. IX-B]
<i>Security of Tenure</i>	Yes.	No. [Sevilla v. CA, G.R. No. 88498 (1992)]
<i>Duration</i>	Until lawful termination.	(1) Until a permanent appointment is issued to the same or different person; or (2) Until the appointee removed by the appointing power <i>Exception</i> : Fixed-Period Temporary Appointments, which may be revoked prior to the end of the term only for valid cause

Temporary appointment: "one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power." [CSC v. *Darangina*, G.R. No. 167472 (2007)]

- **Rationale for temporary appointments:** "Such a temporary appointment is not made for the benefit of the appointee. Rather, an acting or temporary appointment seeks to prevent a hiatus in the discharge of official functions by authorizing a person to discharge the

same pending the selection of a permanent appointee." [CSC v. *Darangina* (2007)]

- Is eligibility required for temporary appointments?
 - *Generally*, a temporary appointee must be eligible.
 - *Exception*: "in the absence of appropriate eligibles, [a person otherwise ineligible] may be appointed to it merely in a

temporary capacity.” [CSC v. Darangina (2007)]

- Hence, the absolutist dictum in *Ignacio v. Banate* [G.R. No. 74720 (1987)], which states that an “an unqualified person cannot be appointed a member even in an acting capacity,” must be read in light of the facts of that case. There, the vacant position was member of the Sangguniang Panglunsod representing the barangays, which the law required to be the president of the city association of barangay councils; the petitioner was such president, and the respondent was not even a barangay captain.
- An acting appointee has no entitlement to the office. Hence, he has no personality to bring a quo warranto action against the permanent appointee to the position. [*Sevilla v. CA*, G.R. No. 88498 (1992)]
- **When temporary appointments not allowed:** In no case shall any Member [or Chair] of the (a) Civil Service Commission, (b) Commission on Elections, or (c) Commission on Audit be appointed or designated in a temporary or acting capacity. [Sec. 1(2), Art. IX-B; Sec. 1(2), Art. IX-C; Sec. 1(2), Art. IX-D, Constitution]

B. PRESIDENTIAL APPOINTMENTS

Par. 1, Sec. 16, Art. VII, Constitution. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

Four Groups of Officers the President is Authorized to Appoint [*Sarmiento v. Mison*, G.R. No. 79974 (1987)]

- (1) Specifically enumerated under Sec. 16, Art. VII of the Constitution, i.e.:
 - (a) Heads of the executive departments;
 - (b) Ambassadors;
 - (c) Other public ministers and consuls;
 - (d) Officers of the armed forces from the rank of colonel or naval captain;
 - (e) Other officers whose appointments are vested in him by the Constitution;
- (2) All other officers of the Government whose appointments are not otherwise provided for by law;
- (3) Officers whom the President may be authorized by law to appoint;
- (4) Officers lower in rank whose appointments the Congress may by law vest in the President alone.

i. Appointments Requiring and Not Requiring Consent of the Commission on Appointments (“Confirmation”)

	Requiring CA Confirmation	Not Requiring CA Confirmation
<i>Appointments covered</i>	(a) Heads of the executive departments; (b) Ambassadors; (c) Other public ministers and consuls; (d) Officers of the armed forces from the rank of colonel or nava captain; (e) Other officers whose appointments are vested in him by the Constitution (unless the Constitution provides that “such appointments require no confirmation”). [Par. 1, Sec. 16, Art. VII, Constitution]	All other presidential appointments. Requirements explicitly exempted from the confirmation requirement under the Constitution: (1) Vice-President as a member of the cabinet [Sec. 3, Art. VII]; (2) Members of the Supreme Court and judges of lower courts [Sec. 9, Art. VIII]; (3) The Ombudsman and his deputies [Sec. 9, Art. XI].

Generally, officers whose appointments are vested in him by the Constitution require confirmation by the Commission on Appointments (CA) (e.g. chairmen and members of the Constitutional Commissions, regular members of the Judicial and Bar Council).

- As a general exception, appointments subject to nomination by the Judicial and Bar Council (i.e. members of the judiciary, and the Ombudsman and his deputies) “require no confirmation.” [Sec. 9, Art. VIII; Sec. 9, Art. XI, Constitution]
- The list of appointments requiring confirmation is exclusive. Congress cannot, by law, require confirmation by the CA for a public office created by statute. This would be unconstitutional as it expands the powers of the CA. [Calderon v. Carale, G.R. No. 91636 (1992)]
- The President does not have the prerogative to voluntarily submit an appointment for confirmation by the CA. [Bautista v. Salonga, G.R. No. 86439 (1989)]

ii. Regular and Ad Interim [Matibag v. Benipayo, G.R. No. 149036 (2002)]

The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproved by the Commission on Appointments or until the next adjournment of the Congress. [Par. 2, Sec. 16, Art. VII, Constitution]

- The classification of whether an appointment is regular or ad interim is relevant for the purposes of the requirement of CA confirmation.

	<i>Regular</i>	<i>Ad Interim</i>
Definition and Constitutional Basis	Appointments made while Congress is in session.	Appointments made "during the recess of the Congress, whether voluntary or compulsory." [<i>Id.</i>]
Nature of the appointment	Permanent	Permanent
Steps in the Appointment Process	(1) President nominates. (2) CA confirms. (3) Commission [i.e. document serving as the written evidence of the appointment] is issued. (4) Appointee accepts, qualifies for office [i.e. takes the oath], and assumes his duties.	(1) President nominates. (2) Commission is issued. (3) Appointee accepts, qualifies for office [i.e. takes the oath], and assumes his duties. (4) CA confirms.
When the appointee may take oath and assume office	Upon confirmation by the CA.	Immediately after appointment, subject to (a) disapproval by the CA or (b) "bypass" by the CA, <i>infra</i> .

- *Ad interim* appointments to the Constitutional Commissions are permanent and irrevocable appointments. Such do not violate the Constitutional prohibition against acting appointments to these commissions. [See *Matibag v. Benipayo* (2002)]
- Termination of *ad interim* appointments: Three cases:
 - (1) Disapproval by the CA;
 - (2) By-Pass by the CA: When the CA does not act on the *ad interim* appointment prior to the next adjournment of Congress; [*Matibag v. Benipayo* (2002)] or
 - (3) Revocation of the appointment by the President, unless prohibited by the Constitution [as in the case of the chairman and members of the Constitutional Commission].
- **Disapproval v. Bypass:** An *ad interim* appointee disapproved by the COA cannot be reappointed. But a by-passed appointee, or one whose

appointment was not acted upon the merits by the CA, may be appointed again by the President, because failure by the CA to confirm an *ad interim* appointment is not disapproval. [See *Matibag v. Benipayo* (2002)]

- **Renewal of by-passed appointment:** "A by-passed appointment is one that has not been finally acted upon on the merits by the Commission on Appointments at the close of the session of Congress. There is no final decision by the Commission on Appointments to give or withhold its consent to the appointment as required by the Constitution. Absent such decision, the President is free to renew the *ad interim* appointment of a by-passed appointee." [*Matibag v. Benipayo* (2002)]

- **Commission:** A document serving as the written evidence of the appointment. It is the warrant for the exercise of the powers and duties of the office to which the officer is commissioned. [DE LEON]

iii. Special Rules and Doctrines on Presidential Appointments

a. Prohibition on Midnight Appointments

Sec. 15, Art. VII, Const. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

Midnight appointments ban period: General rule: Two months immediately before the next presidential elections up to end of the term of the President

Exception: All elements must concur:

- (1) Temporary appointments;
- (2) To executive positions; and
- (3) When continued vacancies will (a) prejudice public service or (b) endanger public safety

Policy: The outgoing President is prevented from continuing to rule the country indirectly after the end of his term. [*Velicaria-Garafil v. Office of the President*, G.R. No. 203372 (2015)]

Inapplicability to the Judiciary: The midnight appointments ban in the constitution does *not* apply to the Judiciary. The applicable provisions on the periods to fill up vacancies in the judiciary in Art. VIII will prevail over the midnight appointments prohibition in Art. VII. [See *De Castro v. JBC*, G.R. No. 191002 (2010)]

- *De Castro* expressly overturned the long-standing rule in *In re Valenzuela* (1998) which applied the midnight appointments ban to judicial positions.

Limited application to Presidential appointments: The constitutional prohibition on midnight appointments only applies to the President. [*De Rama v. CA*, G.R. No. 131136 (2001)]

- *Note, however*, that the **Civil Service Commission** may issue rules and regulations prohibiting local chief executives from making appointments during the last days of their tenure. Appointments of local chief executives must conform to these civil service rules and regulations in order to be valid. [*Provincial Gov't of Aurora v. Marco*, G.R. No. 202331 (2015)]

b. The grant to the President of the power to appoint OICs in ARMM does not violate the Constitution: The appointing power is embodied in *Sec. 16, Art VII of the Constitution*, which pertinently states that the President shall appoint all other officers of the government whom the President may be authorized by law to appoint. Since the President's authority to appoint OICs emanates from *RA No. 10153*, it falls under this group of officials that the President can appoint. Thus, the assailed law rests on clear constitutional basis. [*Kida v. Senate*, G.R. No. 197271 (2011)]

3. RULES ON ACCEPTANCE AND REVOCATION

A. FOUR ELEMENTS OF A VALID, EFFECTIVE, AND COMPLETED APPOINTMENT

- (1) Authority to appoint and evidence of the exercise of the authority;
- (2) Transmittal of the appointment paper and evidence of the transmittal;
- (3) A vacant position at the time of appointment; and
- (4) Receipt of the appointment paper and acceptance of the appointment by the appointee who possesses all the qualifications and none of the disqualifications.

"The [above] elements should always concur in the making of a valid (which should be

understood as both complete and effective) appointment [...] The concurrence of all these elements should always apply[.] These steps in the appointment process should always concur and operate as a single process. There is no valid appointment if the process lacks even one step.” [*Velicaria-Garafil v. Office of the President*, G.R. No. 203372 (2015)]

- **Appointment not final without transmittal:** “It is not enough that the President signs the appointment paper. There should be evidence that the President intended the appointment paper to be issued. It could happen that an appointment paper may be dated and signed by the President months before the appointment ban, but never left his locked drawer for the entirety of his term. Release of the appointment paper through the [Malacañang Records Office (MRO)] is an unequivocal act that signifies the President’s intent of its issuance.” [*Velicaria-Garafil v. Office of the President* (2015)]
- Hence, even if the appointment letter was dated prior to the midnight appointments ban, *supra*, cut-off date, for as long as the transmittal to the MRO was after the cut-off date, the appointment is unconstitutional for violating the midnight appointments ban. [*Id.*]
- N.B. The appointments in *Velicaria-Garafil* did not require CA confirmation. It is submitted that the rule there would also apply to appointments requiring CA confirmations, subject to necessary modifications.

B. RULE ON ACCEPTANCE

General Rule: A person cannot be compelled to accept a public office.

Exceptions: When citizens are required, under conditions provided by law, to render personal military or civil service (*see Sec. 4, Art. II, Const.*)

- N.B. *See Art. 234, Revised Penal Code:* “The penalty of *arresto mayor* or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office.” This is not an exception to the general rule, but it merely punishes the failure to accept the elective public office.

C. IRREVOCABILITY OF A VALID, EFFECTIVE, AND COMPLETED APPOINTMENT

General Rule: An appointment, once made, is irrevocable and not subject to reconsideration.

- The appointee enjoys security of tenure and may only be removed (1) for cause and (2) with due process. Note that while a completed appointment cannot be revoked, the

Exceptions:

(a) The appointment is an absolute nullity. [*Mitra v. Subido*, G.R. No. 21961 (1967)]

- Hence, if the appointment was a prohibited midnight appointment, it can be revoked by the (next) President en masse through executive order. [*See, e.g. Velicaria-Garafil, supra; Aytona v. Castillo, supra*]

(b) There is fraud on the part of the appointee. [*Id.*]

D. Eligibility and Qualification Requirements

1. DEFINITIONS

Eligibility: The state or quality of being legally fitted or qualified to be chosen

Qualification: Endowment/act which a person must do before he can occupy a public office. May be understood in two senses:

- (1) **Endowment:** refers to the qualities or attributes which make an individual eligible for public office. It must be possessed at the time of appointment or election and continuously for as long as the official relationship continues
- (2) **Act:** refers to the act of entering into the performance of the functions of the office.

N.B. Failure to perform an act required by law could affect the officer's title to the given office.

- e.g. The office of any elected official who fails or refuses to take his oath of office within six months from his proclamation shall be considered vacant unless said failure is for cause or causes beyond his control. [Sec. 11, *Omnibus Election Code*]

An oath of office is a qualifying requirement for a public office. Only when the public officer has satisfied this prerequisite can his right to enter into the position be considered plenary and complete. Until then, he has none at all, and for as long as he has not qualified, the holdover officer is the rightful occupant. [*Lecaroz v. Sandiganbayan*, G.R. No. 130872 (1999)]

Once proclaimed and duly sworn in office, a public officer is entitled to assume office and to exercise the functions thereof. The pendency of an election protest is not sufficient basis to enjoin him from assuming office or from discharging his functions. [*Mendoza v. Laxina* (2003)]

2. POWER TO PRESCRIBE QUALIFICATIONS

A. WHO MAY PRESCRIBE QUALIFICATIONS

- (1) **Constitution:** When the qualifications are prescribed by the Constitution, they are generally exclusive, except where the Constitution itself provides otherwise;

Hence, Congress cannot pass a statute that requires drug testing for candidates for the House and Senate, as the qualifications of members of Congress are provided in the Constitution [See *Social Justice Society v. Dangerous Drugs Board*, G.R. No. 157870 (2008)]

- (2) **Congress:** In the absence of constitutional inhibition, Congress has the same right to provide disqualifications that it has to provide qualifications for office. [DE LEON]

B. RESTRICTIONS ON THE POWER OF CONGRESS TO PRESCRIBE QUALIFICATIONS:

- (1) Congress cannot exceed its constitutional powers;
- (2) Congress cannot impose conditions of eligibility inconsistent with constitutional provisions;
- (3) The qualification must be germane to the position ("reasonable relation" rule);
- (4) Where the Constitution establishes specific eligibility requirements for a particular constitutional office, the constitutional criteria are exclusive, and Congress cannot add to them except if the Constitution expressly or impliedly gives the power to set qualifications.
- (5) Congress cannot prescribe qualifications so detailed as to practically amount to making a *legislative appointment*: it is unconstitutional and therefore void for being a usurpation of executive power;

Examples of Prohibited Qualifications in Jurisprudence:

- A proviso which limits the choices of the appointing authority to only one eligible [Flores v. Drilon (1993)];

- *Designating an unqualified person.* The People's Court Act, which provided that the President could designate Judges of First Instance, Judges-at-large of First Instance or Cadastral Judges to sit as substitute Justices of the Supreme Court in treason cases without them necessarily having to possess the required constitutional qualifications of a regular Supreme Court Justice; [*Vargas v. Rilloraza (1948)*]
- *Automatic transfer to a new office.* A legislative enactment abolishing a particular office and providing for the automatic transfer of the incumbent officer to a new office created; [*Manalang v. Quitarano (1954)*]
- *Requiring inclusion in a list.* A provision that impliedly prescribes inclusion in a list submitted by the Executive Council of the Phil. Medical Association as one of the qualifications for appointment; and which confines the selection of the members of the Board of Medical Examiners to the 12 persons included in the list. [*Cuyegkeng v. Cruz, G.R. No. 16263 (1960)*]

3. TIME OF POSSESSION OF QUALIFICATIONS

- (1) **If law specifies:** At the time specified by the Constitution or law; note examples in Constitution:
 - (a) *Sec. 3, Art. VI: "No person shall be a Senator unless he is [...] on the day of the election, is at least [...]"*
 - (b) *Sec. 2, Art. VII: "No person may be elected President unless he is [...] at least forty years of age on the day of the election [...]"*
- (2) **If law does not specify:** If time is unspecified, there are two views:
 - (a) Qualification during commencement of term or induction into office: The word "eligible" as used in constitutions and statutes, has reference to the capacity not of being

elected or appointed to office, but of holding office, and that, therefore, if qualified at the time of commencement of the term or induction into office, disqualification of the candidate or appointee at the time of election or appointment is immaterial;

- (b) Qualification / eligibility during election or appointment: Conditions of eligibility must exist at the time of the election or appointment, and that their existence only at the time of the commencement of the term of office or induction of the candidate or appointee into office is not sufficient to qualify him to office.

Reconciliation of the two views: If the provision refers to "holding of office," rather than to eligibility to office, in defining the qualifications, the courts are inclined to hold that the qualifications are to be determined at the time of the commencement of the term. [DE LEON]

- This is consistent with the rule on liberal interpretation of eligibility requirements for public office.

Qualifications are of a continuing nature:

Qualification is of a continuing nature, and must exist throughout the holding of the public office. Once the qualifications are lost, the public officer forfeits the office.

No estoppel in ineligibility. Knowledge of ineligibility of a candidate and failure to question such ineligibility before or during the election is not a bar to questioning such eligibility *after* such ineligible candidate has won and been proclaimed. Estoppel will not apply in such a case. [*Castaneda v. Yap (1952)*]

Citizenship requirement should be possessed on start of term. The Local Government Code does not specify any particular date or time when the candidate must possess the required citizenship, unlike for residence and age. The requirement is to ensure that no alien shall govern our people and country or a unit of territory thereof. An official begins to govern or discharge his functions only upon proclamation and on

start of his term. This liberal interpretation gives spirit, life and meaning to our law on qualifications consistent with its purpose. [*Frivaldo v. COMELEC (1996)*]

- Note: Constitutional offices require natural-born citizenship, hence this is a non-issue for them.

Presumption of eligibility: Doubts as to the eligibility of a candidate are presumed in favor of one who has been *elected or appointed* to public office.

- “The right to public office should be strictly construed against ineligibility. The right of a citizen to hold office is the general rule, ineligibility the exception, and therefore, a citizen may not be deprived of this right without proof of some disqualification specifically declared by law.” [*DE LEON*]

4. QUALIFICATIONS PRESCRIBED BY THE CONSTITUTION

For President and Vice-President [Sec. 2-3 Art. VII]

- (1) Natural-born citizen
- (2) Registered voter
- (3) Able to read and write
- (4) 40 years old on day of election
- (5) Resident of the Philippines for at least 10 years immediately preceding election day

For Senator [Sec. 3, Art. VI]

- (1) Natural-born citizen
- (2) 35 years old on election day
- (3) Able to read and write
- (4) Registered voter
- (5) Resident of the Philippines for at least 2 years immediately preceding election day

For Members of the House of Representatives [Sec. 6, Art. VI]

- (1) Natural-born citizen
 - (2) 25 years old on election day
 - (3) Able to read and write
 - (4) Registered voter in district in which he shall be elected
 - (5) Resident thereof for not less than one year immediately preceding election day
- N.B. Residency and registration *in the district* (i.e. requirements 4 and 5) are not required for partylist representatives.

Members of the Supreme Court and lower collegiate courts [Sec. 7(1), Art. VIII]

- (1) Natural born citizen
- (2) At least 40 years old
- (3) 15 years or more as a judge or engaged in law practice
- (4) Of proven Competence, Integrity, Probity and Independence

Members of the Constitutional Commissions

	<i>CSC</i>	<i>COMELEC</i>	<i>COA</i>
<i>Citizenship</i>	Natural-born citizen		
<i>Age</i>	35 years old at the time of appointment		
<i>Disqualifications</i>	Not a candidate for any elective position in the election immediately preceding appointment		
<i>Competence</i>	With proven capacity for public administration	College degree holder	(a) CPA with at least 10 years of auditing experience; OR (b) Member of the Bar engaged in practice of law for at least 10 years
<i>Composition rules</i>	None	Chair-man and majority should be members of the bar who have been engaged in the practice of law for at least 10 years.	At no time shall all Members of the Commission belong to the same profession.
<i>Legal Basis</i>	[Sec. 1(1), Art. IX-B]	[Sec. 1(1), Art. IX-C]	[Sec. 1(1), Art. IX-D]

Notes:

- “Practice of law” means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. Generally, to practice law is to give notice or render any kind of service which requires the use in any degree of legal knowledge or skill. [*Cayetano v. Monsod (1991)*]
- “Residency” in election law, refers to domicile, i.e. the place where a party actually or constructively has his permanent home, where he intends to return. To successfully effect a change of domicile, the candidate must prove an actual removal or an actual change of domicile. [*Aquino v. COMELEC*]
- There is a presumption in favor of domicile of origin. Domicile requires the twin elements of actual habitual residence and animus manendi (intent to permanently remain). Domicile of origin is not easily lost; it is deemed to continue absent a clear and positive proof of a successful change of domicile. [*Romualdez-Marcos v. COMELEC (1995)*]

5. PARTICULAR QUALIFICATIONS:**A. RELIGIOUS TEST OR QUALIFICATION IS NOT REQUIRED**

No religious test shall be required for the exercise of civil or political rights. [Sec. 5, Art. III, Const.]

B. QUALIFICATION STANDARDS AND REQUIREMENTS UNDER THE CIVIL SERVICE LAW

Qualification standards enumerate the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance. [Sec. 22, Book V, Admin. Code]

The Departments and Agencies are responsible for continuously establishing, administering and maintaining the qualification standards as an incentive to career advancement. [Sec. 7, Rule IV, Omnibus Rules]

Such establishment, administration, and maintenance shall be assisted and approved

by the CSC and shall be in consultation with the Wage and Position Classification Office [*Id.*]

It shall be established for all positions in the 1st and 2nd levels [*Sec. 1, Rule IV, Omnibus Rules*]

C. POLITICAL QUALIFICATIONS FOR OFFICE

Political qualifications refer to membership in political parties, including those registered in the party-list system.

General Rule: Political qualifications are not required for public office.

Exceptions:

- (1) Membership in the electoral tribunals of either the House of Representatives or Senate, which requires proportional representation; [*Art. VI, Sec. 17, Const.*]
- (2) Party-list representation;
- (3) Commission on Appointments, which requires proportional representation; [*Art. VI, Sec. 18, Const.*]
- (4) Vacancies in local Sanggunians, except the Sangguniang Barangay, which requires that the appointee come from the same political party as that of the sanggunian member who caused the vacancy [*Sec. 45(b), Local Government Code*]

D. NO PROPERTY QUALIFICATIONS

Since sovereignty resides in the people, it is necessarily implied that the right to vote and to be voted should not be dependent upon a candidate's wealth. Poor people should also be allowed to be elected to public office because social justice presupposes equal opportunity for both rich and poor. [*Maguera v. Borra (1965); Aurea v. COMELEC (1965)*]

The requirement that a candidate post a bond worth a year's salary is unconstitutional for effectively imposing a property qualification. nN person shall, by reason of poverty, should be denied the chance to be elected to public office. [*Maguera v. Borra (1965)*]

E. ALIENS ARE NOT ELIGIBLE FOR PUBLIC OFFICE

The purpose of the citizenship requirement is to ensure that no alien, i.e., no person owing allegiance to another nation, shall govern our people and country or a unit of territory thereof. [*Frivaldo v. COMELEC (1996)*]

F. EFFECT OF PARDON UPON THE DISQUALIFICATION TO HOLD PUBLIC OFFICE

Traditional Rule:

General Rule: Pardon will not restore the right to hold public office. (*Art. 36, Revised Penal Code*)

Exception: When the pardon's terms expressly restores such (*Art. 36, RPC*);

Rule under *Risos-Vidal v. Estrada (2015)*:

Risos-Vidal v. Estrada has raised questions about the organization of the above traditional rule, particularly as to whether the terms of the pardon must expressly restore political rights. [*Risos-Vidal v. COMELEC, G.R. No. 206666, January 21, 2015*]

The Court broadly held there that the "pardoning power of the President cannot be limited by legislative action," and added that "Articles 36 and 41 of the Revised Penal Code cannot, in any way, serve to abridge or diminish the exclusive power and prerogative of the President to pardon persons convicted of violating penal statutes."

Under *Risos-Vidal*, if the wording of the pardon is "complete, unambiguous, and unqualified," it includes the restoration of civil and political rights because it is "unfettered by Articles 36 and 41 of the Revised Penal Code." [*Id.*]

E. Disabilities and Inhibitions of Public Officers

1. DISQUALIFICATIONS TO HOLD PUBLIC OFFICE

Individuals who lack any of the qualifications prescribed by the Constitution or by law for a public office are ineligible (i.e. disqualified from holding such office).

Authority to prescribe disqualifications: The legislature has the right to prescribe disqualifications in the same manner that it can prescribe qualifications, provided the prescribed disqualifications do not violate the Constitution.

2. CONSTITUTIONAL DISQUALIFICATIONS

A. IN GENERAL

- (1) Losing candidates cannot be appointed to any governmental office within one year after such election. [Sec. 6, Art. IX-B]
- (2) Elective officials during their tenure are ineligible for appointment or designation in any capacity to any public office or position [Sec. 7(1), Art. IX-B] unless they forfeit their seat
- (3) Appointive officials shall not hold any other governmental position, unless otherwise allowed by law or his position's primary functions [Sec. 7(2), Art. IX-B]
 - This is the general Constitutional prohibition on holding multiple offices. There is a specific provision applicable to high-ranking officials of the executive department as explained in *Civil Liberties Union v. Executive Secretary*.
 - There is no violation of the constitutional provision when another office is held by a public officer in an ex officio capacity (where one can't receive compensation or other honoraria anyway), as provided by

law and as required by the primary functions of his office. [*National Amnesty Commission v. COA* (2004)]

- (4) Impeachment: "Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines[.]" [Sec. 3(7), Art. XI]

On the holding of multiple offices by high-ranking executive department officials

[*Civil Liberties Union v. Executive Secretary*, G.R. No. 83896 (1991)]

Par. 1, Sec. 13, Art. VII, Const. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure.

The prohibition in Sec. 13, Art. VII is a special rule in relation to Sec. 7, Art. IX of the Constitution. [*Civil Liberties Union v. Executive Secretary*]

Covered officials:

- (a) President
- (b) Vice-President
- (c) Members of the Cabinet, and their deputies or assistants
N.B. "Members of the Cabinet" here are synonymous with "heads of the executive departments," i.e. the prohibition does not apply to all officers of cabinet rank. [*Civil Liberties Union v. Executive Secretary, Resolution on the Motion for Reconsideration*;

General Rule: The holding of any other office or employment is prohibited for the covered officials in Sec. 13, Art. VII.

Exceptions:

- (1) Unless otherwise provided in the Constitution (e.g. Secretary of Justice as ex officio member of the JBC); or
- (2) *Ex Officio* positions

Requirements for valid ex-officio holding:

- (1) The holding of the ex-officio office is provided by law;
- (2) The holding is required by the primary functions of their position; and
- (3) The position is held without additional compensation.

B. SPECIFIC CONSTITUTIONAL DISQUALIFICATIONS

<i>Public Officer</i>	<i>Disqualifications</i>
<i>The President, Vice President, the Members of the Cabinet and their deputies or assistants</i>	Shall not hold any other office or employment during their tenure, <i>unless</i> otherwise provided in the Constitution. (Art. VII, Sec. 13) [See <i>Civil Liberties Union v. Executive Secretary, infra</i>]
<i>Senator or Member of the House of Representatives</i>	(1) [Incompatible Office] May not hold during his term any other office or employment in the Government, or any subdivision, agency or instrumentality thereof, including government -owned or -controlled corporations or their subsidiaries; (2) [Prohibited Office] Shall also not be appointed to any office when such was created or its emoluments were increased during his term. [Sec. 13, Art. VI]
<i>Members of the Supreme Court and other courts established by law</i>	Shall not be designated to any agency performing quasi-judicial or administrative functions. [Sec. 12, Art. VIII] <i>Rationale:</i> Anathema to judicial independence, since this would subject members of the judiciary to the power of control of executive officials.
<i>Members of the Constitutional Commission</i>	(1) Shall not hold any other office or employment [during their tenure]. [Art. IX-A, Sec. 2] [Art. XI, Sec. 8] (2) Must not have been candidates for any elective position in the elections immediately preceding their appointment. [Sec. 1, Art. IX-B; Sec. 1, Art. IX-C; Sec. 1, Art. IX-D]
<i>Ombudsman and his Deputies</i>	(1) Same disqualifications and prohibitions as members of the Constitutional Commission, <i>supra</i> [Sec. 8, Art. XI]; <i>plus</i> (2) Shall not be qualified to run for any office in the election immediately succeeding their cessation from office. [Sec. 11, Art. XI]
<i>The President's spouse and relatives by consanguinity or affinity within the fourth civil degree</i>	Shall not be appointed during President's tenure as: (1) Members of the Constitutional Commissions, or (2) Office of the Ombudsman, or (3) (a) Secretaries, (b) undersecretaries, (c) chairmen or heads of bureaus or offices, including government-owned-or -controlled corporations. [Sec. 13, Art. VII]

3. OTHER DISQUALIFICATIONS AND PROHIBITIONS

A. IN GENERAL

- (1) Mental or physical incapacity;
- (2) Misconduct or crime: Persons convicted of crimes involving moral turpitude are *usually* disqualified from holding public office;
- (3) Removal or suspension from office: This disqualification is not presumed, and cannot be imposed when not provided in the constitution or in statutes;
- (4) Previous tenure of office: See prohibitions on reappointment for specific Constitutional offices;
- (5) Consecutive terms limit:
 - (a) Vice-President: 2 consecutive terms
 - (b) Senator: 2 consecutive terms
 - (c) Representative: 3 consecutive terms
 - (d) Elective local officials = 3 consecutive terms [*Sec. 8, Art. X, Constitution*]
- (6) Holding more than one office: to prevent offices of public trust from accumulating in a single person, and to prevent individuals from deriving, directly or indirectly, any pecuniary benefit by virtue of their holding of dual positions.

B. PROHIBITION ON HOLDING OFFICES IN THE PRIVATE SECTOR

Section 7 (b)(1) of RA 6713 considers unlawful for public officials and employees during their incumbency to own, control, manage, or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law.

Private Practice of the Profession: *Section 7 of RA 6713* also generally provides for the prohibited acts and transactions of public officials and employees. Subsection (b)(2) prohibits them from engaging in the private practice of their profession during their incumbency.

- **Exception:** As an exception, a public official or employee can engage in the practice of his or her profession under the following conditions: (1) the private practice is authorized by the Constitution or by the law; and (2) the practice will not conflict, or tend to conflict, with his or her official functions.

C. PROHIBITION ON NEPOTIC APPOINTMENTS; EXCEPTIONS

General Rule on Nepotism: The Civil Service Law prohibits all appointments in the national and local governments or any branch or instrumentality thereof made in favor of the relative of:

- (a) appointing authority;
- (b) recommending authority;
- (c) chief of the bureau or office; or
- (d) person exercising immediate supervision over the appointee

In the last two cases, it is immaterial who the appointing or recommending authority is. To constitute a violation of the law, it suffices that an appointment is extended or issued in favor of a relative of the chief of the bureau or office, or the person exercising immediate supervision over the appointee [*CSC v. Dacoycoy (1999)*]

Relative: One who is related within the third degree of either consanguinity or of affinity. [*Sec. 59, Civil Service Law*]

Exceptions: The prohibition on nepotism appointments in the Civil Service Law does not apply if the appointee is:

- (a) person employed in a confidential capacity
- (b) teachers
- (c) physicians
- (d) member of the Armed Forces of the Philippines

D. DISQUALIFICATIONS IN THE LOCAL GOVERNMENT CODE [Sec. 40, LGC]

The following persons are disqualified from running for any elective local position:

- (a) Sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by 1 year or more of imprisonment, within 2 years after serving sentence;
- (b) Removed from office as a result of an administrative case;
- (c) Convicted by final judgment for violating the oath of allegiance to the Republic;
- (d) Dual citizenship;
- (e) Fugitive from justice in criminal or non-political cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of the Local Government Code; or
- (g) Insane or feeble-minded.

Dual citizenship is different from dual allegiance.

- Dual citizenship arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states.
- Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states.
- While dual citizenship is involuntary, dual allegiance is the result of an individual's volition. The Constitutional Commission was not with dual citizens per se but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization.
- Hence, the phrase "dual citizenship" in R.A. No. 7160 [Local Government Code], sec. 40(d) must be understood as referring to "dual allegiance." [*Mercado v. Manzano* (1999)]

F. Powers and Duties of Public Officers

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| <ol style="list-style-type: none"> i. Classification of powers and duties ii. Authority of public officers iii. Source of powers and authority iv. Duties of public officers |
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CLASSIFICATION OF POWERS AND DUTIES [DE LEON]

1. AS TO NATURE

A. MINISTERIAL

Official duty is ministerial when it is absolute, certain and imperative involving merely execution of a specific duty arising from fixed and designated facts. Where the officer or official body has no judicial power or discretion as to the interpretation of the law, and the course to be pursued is fixed by law, their acts are ministerial only.

General Rule: Performance of duties of this nature may be properly delegated to another.

Exceptions:

- (1) Delegation is expressly prohibited by law; or
- (2) The law expressly that the act be performed by the officer in person.

B. DISCRETIONARY

Acts which necessarily require the exercise of reason in the adaptation of means to an end, and discretion in determining how or whether the act shall be done or the course pursued. When the law commits to any officer the duty of looking into facts and acting upon them, not in a way which it specifically directs, but after a discretion in its nature, the function is discretionary (e.g. quasi-judicial acts).

General Rule: A public officer cannot delegate his discretionary duties to another.

Rationale: In cases where the execution of the office requires exercise of judgment or discretion by the officer, the presumption is

that he was chosen to because he was deemed fit and competent to exercise such judgment.

Exception: The power to substitute another in his place has been expressly granted by law.

2. AS TO THE OBLIGATION OF THE OFFICER TO PERFORM HIS POWERS AND DUTIES

A. MANDATORY

Powers conferred on public officers are generally construed as mandatory although the language may be permissive, where they are for the benefit of the public or individuals.

B. PERMISSIVE

Statutory provisions define the time and mode in which public officers will discharge their duties, and those which are obviously designed merely to secure order, uniformity, system and dispatch in public business are generally deemed directory.

If the act does not affect third persons and is not clearly beneficial to the public, permissive words will not be construed as mandatory.

3. AS TO THE RELATIONSHIP OF THE OFFICER TO HIS SUBORDINATES

A. POWER OF CONTROL

It implies the power of an officer to manage, direct or govern, including the power to alter or modify or set aside what a subordinate had done in the performance of his duties and to substitute his judgment for that of the latter.

B. POWER OF SUPERVISION

Supervisory power is the power of mere oversight over an inferior body which does not include any restraining authority over such body.

A supervising officer merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them.

AUTHORITY OF PUBLIC OFFICERS

Authority of public officers consists of those which are:

- (a) expressly conferred by law ;
- (b) incidental to the exercise of the powers granted; and
- (c) necessarily implied

Doctrine of necessary implication – all powers necessary for the effective exercise of the express powers are deemed impliedly granted (Nachura, 2015)

Authority can be exercised only during the term when the public officer is, by law, invested with the rights and duties of the office.

Source of Powers and Authority [DE LEON]

Under our political system, the source of governmental authority is found in the People. Directly or indirectly through their chosen representatives, they create such offices and agencies as they deem to be desirable for the administration of the public functions and declare in what manner and by what persons they shall be exercised. Their will finds its expression in the Constitution and the laws.

The right to be a public officer, then, or to exercise the powers and authority of a public office, must find its source in some provision of the public law.

In the absence of a valid grant, public officials are devoid of power. A public official exercises power, not rights. The Government itself is merely an agency through which the will of the State is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such there is no presumption that they are empowered to act. There must be a delegation of such authority, either express or implied. [*Villegas v. Subido*, 1969]

But once the power is expressly granted, it will be broadly construed in line with the doctrine of necessary implication.

DUTIES OF PUBLIC OFFICERS**(1) General (Constitutional) duties [NACHURA, 2015]**

- (a) To be accountable to the people; to serve them with utmost responsibility, integrity, loyalty and efficiency; to act with patriotism and justice; and to lead modest lives [Sec. 1, Art. IX]
- (b) To submit a declaration under oath of his assets, liabilities and net worth upon assumption of office and as often thereafter as may be required by law [Sec. 17, Art. XI]
- (c) To owe the State and the Constitution allegiance at all times [Sec. 18, Art. XI]

(2) Obligations under the Code of Conduct and Ethical Standards for Public Officials and Employees [DE LEON, 2014, citing Sec. 5, RA 6713]

- (a) Act promptly on letters and requests
All public officials shall, within fifteen (15) working days from receipt, respond to letters, telegrams or other means of communication sent by the public. The reply must contain the answer taken on the request.
- (b) Submit annual performance reports
All heads or other responsible officers of agencies of the government or of GOCCs shall, within forty-five (45) working days from the end of the year, render a full and complete report of performance and accomplishments, as prescribed by existing rules and regulations of the agency, office or corporation concerned.
- (c) Process documents and papers expeditiously
All official papers and documents must be processed and completed within a reasonable time from the preparation thereof and must contain, as far as practicable, not more than three (3) signatories therein.
- (d) Act immediately on the public's personal transactions
All public officials and employees must attend to anyone who wants to avail himself of the services of their

offices, and must, at all times, act promptly and expeditiously.

- (e) Make documents accessible to the public

All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

G. Rights of Public Officers

- i. In general
- ii. Right to compensation
- iii. Other rights

IN GENERAL [DE LEON]

(1) Rights incident to public office

The rights of one elected or appointed to office are, in general, measured by the Constitution or the law under which he was elected or appointed.

Right to office – The just and legal claim to exercise the powers and the responsibilities of the public office.

(2) Rights as a citizen

- (a) Protection from publication commenting on his fitness and the like

The mere fact that one occupies a public office does not deprive him of the protection accorded to citizens by the Constitution and the laws.

However, by reason of the public character of his employment or office, a public officer is, in general, held not entitled to the same protection from publications commenting on his fitness and the like, as is accorded to the ordinary citizen.

- (b) Engaging in certain political and business activities

The governmental interest in maintaining a high level service by assuring the efficiency of its employees in the performance of their tasks may require public employees to suspend or refrain from certain political or business activities that are embraced within the constitutional rights of others, when such activities are reasonably deemed inconsistent with their public status and duties.

RIGHT TO COMPENSATION [DE LEON]

Compensation – in reference to the remuneration of public officers means pay for doing all that may be required of the official, whether it is in the form of a fixed salary or wages, *per diems*, fees, commissions, or perquisites of whatsoever character.

Distinguished from *honorarium* which is something given not as a matter of obligation but in appreciation for services rendered.

Salary –personal compensation to be paid to the public officer for his services, and it is generally a fixed annual or periodical payment depending on the time and not on the amount of the services he may render

Distinguished from wages in that salary is given to officers of higher degree of employment than those to whom wages are given.

Constitutional Provisions Regarding Compensation of Public Officers

The salaries of Senators and Members of the House of Representatives shall be determined by law. No increase in said compensation shall take effect until after the expiration of the full term of all the Members of the Senate and the House of Representatives approving such increase. [Sec.10, Art. VI]

The President shall have an official residence. The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure. No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved. They shall not receive during their tenure any other emolument from the Government or any other source. [Sec. 6, Art.VII]

The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased. [Sec. 10, Art. VIII]

No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the

consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. [Sec. 8, Art. IX-B]

The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions. [Sec. 5, Art. IX-B]

Basis of Right

The relation between an officer and the public is not the creation of contract, nor is the office itself a contract. Hence, his right to compensation is not the creation of contract. It exists as the creation of law and belongs to him not by force of any contract but because the law attaches it to the office.

The right to compensation grows out of the services rendered. After services have been rendered, the compensation thus earned cannot be taken away by a subsequent law.

As a general proposition, a public official is not entitled to any compensation if he has not rendered any service. [*Acosta v. CA*, 2000]

Salary Not Subject to Garnishment

The salary of a public officer may not, by garnishment, attachment or order of execution, be seized before being paid to him and, appropriated for the payment of his debts.

The salary check of a government officer or employee does not belong to him before it is physically delivered to him. Until that time, the check belongs to the government as public fund and may not be garnished. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law. [*De la Victoria v. Burgos*, (1995)]

Right of a de facto officer to salary – Where there is no *de jure* officer, a *de facto* officer,

who in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office.

OTHER RIGHTS [De Leon, 2014]

(1) Rights under the Constitution

(a) Right to self-organization

The right to self-organization shall not be denied to government employees. [Sec. 2(5), Art. IX-B] Government employees in the civil service are granted the right to form unions enjoyed by workers in the private sector.

However, the constitutional grant to government workers of the right to form labor organizations or unions does not guarantee them the right to bargain collectively with the government or to engage in concerted activities including the right to strike, which are enjoyed by private employees. They are prohibited from staging strikes, demonstrations, mass leaves, walk-outs and other forms of mass actions which will result in temporary stoppage or disruption of public services

(b) Right to protection of temporary employees

Employees in the government given temporary appointments do not enjoy security of tenure. They shall be given such protection as may be established by law to prevent indiscriminate dismissals and to see to it that their separation or replacement is made only for justifiable reasons

(c) Freedom of members of Congress from arrest and from being questioned

A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while Congress is in session. No member shall be questioned nor be held liable in any other place for any speech or debate

in the Congress or in any committee thereof. [Sec. 11, Art. VI]

- (d) Right not to be removed or suspended except for cause provided by law

Implicit in the constitutional prohibition against removal or suspension except for cause, is the existence of a charge, due hearing, and the finding of guilt by the proper authority.

(2) Rights under the Civil Service Decree and the New Administrative Code

- (a) Right to preference in promotion
- (b) Right to present complaints and grievances
- (c) Right not to be suspended or dismissed except for cause as provided by law and after due process
- (d) Right to organize

(3) Next-in-Rank Rule

This rule specifically applies only in cases of promotion. It neither grants a vested right to the holder nor imposes a ministerial duty on the appointing authority to promote such person to the next higher position.

The rule means that old employees should be considered first on the assumption that they have gained not only superior skills but also greater dedication to the public service.

However, the law does not preclude the infusion of new blood, younger dynamism, or necessary talents into the government service provided that the acts of the appointing power are bonafide for the best interest of the public service and the person chosen has the needed qualifications. [*Corazon Cabagnot v. Civil Service Commission*, 1993]

(4) Personnel Actions

Any action denoting the movement or progress of personnel in the civil service is known as personnel action. It includes:

- (a) appointment through certification
- (b) promotion
- (c) transfer

- (d) reinstatement
- (e) reemployment
- (f) detail
- (g) reassignment
- (h) demotion and
- (i) separation

(5) Rights under the Revised Government Service Insurance Act

Covered employees are entitled to retirement benefits, separation benefits, unemployment or involuntary separation benefits, disability benefits, survivorship benefits, funeral benefits and life insurance benefits.

Right to Retirement Pay – given to government employees to reward them for giving the best years of their lives in the service of their country. Retirement laws are liberally construed in favor of the retiree [*Profeta v. Drilon* (1992)]. It may not be withheld and applied to his indebtedness to the government [*Tantuico v. Domingo* (1994)]

(6) Right to Reimbursement and Indemnity

When a public officer, in the due performance of his duties, has been expressly or impliedly required by law to incur expenses on the public account, not covered by his salary or commission and not attributable to his own neglect or default, the reasonable and proper amount thereof forms a legitimate charge against the public for which he should be reimbursed.

Within the same limits, the officer is entitled to be indemnified by the public against the consequences of acts which he has been expressly or impliedly required to perform upon the public account, and which are not manifestly illegal and which he does not know to be wrong.

(7) Right to Reinstatement and Back Salary

Reinstatement means the restoration to a state or condition from which one had been removed or separated. One who is reinstated assumes the position he had occupied prior to the dismissal. Back salary or wages is a form of relief that restores the income that was lost by reason of unlawful dismissal

An officer who has been lawfully separated or suspended from his office is not entitled to compensation for the period during which he was so suspended. Where an officer was unlawfully removed and was prevented for a time by no fault of his own from performing the duties of his office, he may recover backwages, and the amount that he had earned in other employment during his unlawful removal should not be deducted from his unpaid salary.

(8) Rights to Property, Devices and Inventions

Title to a public office carries with it the right, during the incumbency of the officer, to the insignia and property thereof.

The question whether records, discoveries, inventions, devices, data and the like, made or prepared by an officer while he is occupying the office, belong to the public, must be determined with reference to the facts of each case.

- (a) Where such are indispensable in the proper conduct of the office, the officer may not take them as his own property.
- (b) If, not being required by law, they are prepared by the officer apart from his official duties and are not indispensable in the proper conduct of the office, the officer may acquire a property right therein.

H. Liabilities of Public Officers

- i. In general
- ii. Preventive suspension and back salaries
- iii. Illegal dismissal, reinstatement and back salaries

IN GENERAL

The liability of a public officer to an individual or the public is based upon and is co-extensive with his duty to the individual or the public. Public officers in respect of the persons to whom their duty is owing, are divided into 2 classes – those whose duty is owed solely to the public and those who duty is owed in some degree to the individuals. An individual has no cause of action against a public officer for a breach of duty owed solely to the public. [DE LEON]

A public officer is not liable for the injuries sustained by another as a consequence of official acts done within the scope of his authority, except as otherwise provided by law. [NACHURA]

A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or negligence. [Sec. 38(1), Chapter 9, Book I, Admin. Code]

However, under *Sec. 24 of the Local Government Code*, local governments and their officials are expressly not exempt from liability for death or injury to persons or damage to property.

THREE-FOLD RESPONSIBILITY OF PUBLIC OFFICERS

A public officer is under a three-fold responsibility for violation of duty or for wrongful act or omission:

- (1) *Civil Liability*: if the individual is damaged by such violation, the official shall, in some cases, be held

liable civilly to reimburse the injured party

- (2) *Criminal Liability*: if the law has attached a penal sanction, the officer may be punished criminally. The mere fact that an officer is acting in an official capacity will not relieve him from criminal liability.
- (3) *Administrative Liability*: such violation may also lead to imposition of fine, reprimand, suspension or removal from office, as the case may be.

LIABILITY OF MINISTERIAL OFFICERS

[NACHURA]

- (1) *Nonfeasance* - Neglect or refusal to perform an act which is the officer's legal obligation to perform
- (2) *Misfeasance* - Failure to use that degree of care, skill, and diligence required in the performance of official duty
- (3) *Malfeasance* - The doing, through ignorance, inattention or malice, of an act which he had no legal right to perform

STATUTORY LIABILITY

- (a) Article 32, Civil Code - liability for failure or neglect to perform official duty
- (b) Article 33, Civil Code - liability for violating rights and liberties of private individuals
- (c) Article 34, Civil Code - liability of peace officers for render aid or protection to a person; subsidiary liability of municipal corporations in such case
- (d) Sec. 38(2), Chapter 9, Book I, Admin. Code -- liability for neglecting to perform a duty without just cause within (i) a period fixed by law or regulation; or (ii) a reasonable period, if no period is fixed.

Liability on Contracts - the public officer shall be personally liable on contracts he enters into if he acted without, or exceeded his authority

Liability on Tort - The public officer shall be personally liable if he goes beyond the scope of his authority, or exceeds the powers conferred upon him by law

LIABILITY OF SUPERIOR OFFICERS FOR ACTS OF SUBORDINATE OFFICERS

A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of [Sec. 38(3), *Administrative Code*]

LIABILITY OF SUBORDINATE OFFICERS

No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for wilful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors. [Art. 39, Chapter 9, Book I, *Admin. Code*]

NON-APPLICABILITY OF THE DOCTRINE OF COMMAND RESPONSIBILITY AND THE PRINCIPLE OF RESPONDEAT SUPERIOR TO PUBLIC OFFICERS

Neither the principle of command responsibility (in military or political structural dynamics) nor the doctrine of *respondeat superior* (in quasi delicts) applies in the law of public officers. The negligence of the subordinate cannot be ascribed to his superior in the absence of evidence of the latter's own negligence [*Reyes v. Rural Bank of San Miguel* (2004)]

Exception: The President, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine. [*In the Matter of the Petition for Writ of Amparo and Habeas Data in favor of Noriel*]

H. Rodriguez; Rodriguez v. Macapagal-Arroyo (2011)]

PREVENTIVE SUSPENSION AND BACK SALARIES

Preventive Suspension is a disciplinary measure which is intended to enable the disciplinary authority to investigate charges against the respondent by preventing the latter from using his position or office to influence witnesses, to intimidate them, or to tamper with the records which may be vital in the prosecution of the case against him.

KINDS OF PREVENTIVE SUSPENSION

(a) Preventive suspension pending investigation

The proper disciplining authority may preventively suspend any subordinate officer under his authority pending an investigation, if the charge against such officer involves dishonesty, oppression or grave misconduct or neglect in the performance of duty or if there are reasons to believe that the respondent is guilty of the charges which would warrant his removal from service [Sec. 51, Chapter 6, Subtitle A, Title I, Book V, Admin. Code]

No compensation is due for the period of preventive suspension pending investigation. Such preventive suspension is authorized by the Civil Service Law and cannot, therefore, be considered "unjustified" even if later the charges are dismissed. It is one of those sacrifices which holding a public office requires for the public good. For this reason, it is limited to 90 days unless the delay in the conclusion of the investigation is due to the employee concerned. (De Leon, 2014)

(b) Preventive suspension pending appeal

An appeal [from the decision of the disciplinary authority] shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as

having been under preventive suspension during the pendency of the appeal in the event he wins the appeal. [Sec. 47(4), Chapter 6, Subtitle A, Title I, Book V, Admin. Code]

Employees are entitled to compensation for the period of their suspension pending appeal if they are found innocent. Such suspension is actually punitive and it is precisely because respondent is penalized before his sentence is confirmed that he should be paid his salaries in the event he is exonerated. It would be unjust to deprive him of his pay as a result of immediate execution of the decision against him and continue to do so even after it is shown that he is innocent of the charges for which he was suspended. (De Leon, 2014)

Pending Investigation	Pending Appeal
Not a penalty but only a means of enabling the disciplining authority to conduct unhampered investigation	Punitive in character
No backwages due for the period of suspension even if found innocent unless suspension is unjustified	If exonerated – reinstated with full pay for the period of suspension If reprimanded – cannot claim backwages. Penalty is commuted

RULES ON PREVENTIVE SUSPENSION:**(A) Appointive Officials. –****(1) Not a Presidential Appointee**

- (a) *By* – the proper disciplining authority
- (b) *Against* – any subordinate officer or employee under such authority
- (c) *When* – pending an investigation
- (d) *Grounds* –
 - (i) Charge involves dishonesty, oppression or grave misconduct, neglect in the performance of duty; or
 - (ii) There are reasons to believe that respondent is guilty of the charges which would warrant his removal from the service
- (e) *Period* – administrative investigation must be terminated within 90 days, otherwise the respondent shall be automatically reinstated unless the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, in which case the period of delay shall not be counted

(2) Presidential Appointee

Preventive suspension in the case of presidential appointees which may initially be justified under the circumstances may raise a due process question if continued for an unreasonable period of time. (De Leon, 2014)

(B) Elective Officials [Sec. 63, RA 7160]. –**(1) By – against**

- (a) *President* – elective official of a province, HUC or ICC
- (b) *Governor* – elective official of CC or municipality
- (c) *Mayor* – elective official of a brgy

(2) When – at any time after the issues are joined**(3) Requisites:**

- (a) After the issues are joined;

(b) Evidence of guilt is strong; and**(c) Given the gravity of the offense, there is great probability that the continuance in office of the respondent could:**

- (i) influence the witnesses; or
- (ii) pose a threat to the safety and integrity of the records and other evidence.

(4) Duration

- (a) Single administrative case – not to exceed 60 days
- (b) Several administrative cases – not more than 90 days within a single year on the same ground or grounds existing and known at the time of the first suspension

(5) Preventive suspension of an elective local official is not an interruption of the 3-term limit rule [Aldovino v. COMELEC (2009)]

Note: The authority to preventively suspend is exercised concurrently by the Ombudsman, pursuant to RA 6770, which authorizes preventive suspension of 6 months. [*Hagad v. Gozo-Dadole*, 1995]

ILLEGAL DISMISSAL, REINSTATEMENT AND BACK SALARIES**DEFINITIONS**

Reinstatement means the restoration to a state or condition from which one had been removed or separated. One who is reinstated assumes the position he had occupied prior to the dismissal. Back salary or wages is a form of relief that restores the income that was lost by reason of unlawful dismissal

DUTY OF PLAINTIFF TO PROVE HIS RIGHT TO OFFICE

For a plaintiff to succeed in seeking reinstatement to an office, he must prove his right to the office. In a *quo warranto* proceeding, the person suing must show that he has a clear right to the office allegedly

held unlawfully by another. Absent that right, the lack of qualification or eligibility of the supposed usurper is immaterial.

Where removal or suspension lawful – An officer who has been lawfully separated or suspended from his office is not entitled to compensation for the period during which he was so suspended, even if it be subsequently determined that the cause for which he was suspended was unjustified (so long as the preventive suspension was within the periods provided by law).

Where removal or suspension unlawful – Where an officer was unlawfully removed and was prevented for a time by no fault of his own from performing the duties of his office, he may recover backwages, and the amount that he had earned in other employment during his unlawful removal should not be deducted from his unpaid salary.

OTHER RULES

The award for backwages is limited to a maximum period of 5 years and not to full back salaries from illegal dismissal up to reinstatement.

A petition for quo warranto and mandamus affecting title to public office must be filed within 1 year from the date the petitioner is ousted from his position. The claim for back salaries and damages is also subject to the 1-year prescriptive period. (De Leon, 2014)

I. Immunity of Public Officers

General Rule: The doctrine of official immunity applies to complaints filed against public officials for acts done in the performance of their duties.

Exceptions:

- (1) Where the public official is charged in his official capacity for acts that are unlawful and injurious to the rights of others.
- (2) Where the public official is clearly being sued not in his official capacity but in his personal capacity, although the acts complained of may have been committed while he occupied a public position [*Lansang v. CA (2000)*].
- (3) Suit to compel performance of official duty or restrain performance of an act (i.e. mandamus, prohibition).

A. RATIONALE

The doctrine of official immunity promotes fearless, vigorous and effective administration of policies of government. It is generally recognized that public officers and employees would be unduly hampered, deterred and intimidated in the discharge of their duties, if those who act improperly, or even exceed the authority given them, were not protected to some reasonable degree by being relieved from private liability. The threat of suit could also deter competent people from accepting public office.

Acts of a public officer are protected by the presumption of good faith. Even mistakes concededly committed by such a public officer in the discharge of his official duties are not actionable as long as it is not shown that they were motivated by malice or gross negligence amounting to bad faith.

OTHER PUBLIC POLICY CONSIDERATIONS:

- (1) Loss of valuable time caused by such actions
- (2) Unfairness of subjecting officials to personal liability for the acts of their subordinates
- (3) A feeling that the ballot and removal procedures are more appropriate methods of dealing with the misconduct in public office.

B. OFFICIAL IMMUNITY DISTINGUISHED FROM STATE IMMUNITY

The immunity of public officials is a more limited principle than state immunity since its purpose is not directly to protect the sovereign, but rather to do so only collaterally, by protecting the public official in the performance of his government function.

The doctrine of sovereign immunity is principally rested upon the tenuous ground that the king could do no wrong. It served to protect the impersonal body politic or government itself from tort liability.

Official immunity serves as a protective aegis for public officials from tort liability for damages arising from discretionary acts or functions in the performance of their official duties.

C. PRESIDENTIAL IMMUNITY FROM SUIT

General Rule: The President shall be immune from suit during his tenure.

Exception: Impeachment complaint [Sec. 2 Art. XI, Constitution]

While the President is immune from suit, she may not be prevented from instituting a suit.

A non-sitting President does not enjoy immunity from suit, even for acts committed during the latter's tenure [*In the Matter of the Petition for the Writ of Amparo and Habeas Data in favor of Noriel H. Rodriguez; Rodriguez v. Macapagal-Arroyo* (2011)].

J. De Facto Officers

- i. *De facto* doctrine
- ii. *De facto* officer defined
- iii. Elements of a *de facto* officership
- iv. Distinguished from other officers
- v. Office created under an unconstitutional statute
- vi. Legal effect of acts of *de facto* officers
- vii. Liability of *de facto* officers
- ix. Right to compensation of *de facto* officer

DE FACTO DOCTRINE

It is the doctrine that a person who is admitted and sworn into office by the proper authority is *deemed to be rightfully in such office* until:

- (1) he is ousted by judicial declaration in a proper proceeding; or
- (2) his admission thereto is declared void.

Purpose: to ensure the orderly functioning of government. The public cannot afford to check the validity of the officer's title each time they transact with him.

DE FACTO OFFICER DEFINED

One who has the reputation of being the officer that he assumes to be, and yet is not a good officer in point of law. [*Torres v. Ribo* (1948)]

ELEMENTS OF A DE FACTO OFFICERSHIP

- (1) A validly existing public office (i.e. a *de jure* office)
- (2) Actual physical possession of the office in good faith.
- (3) Color of title to the office or general acquiescence by the public

There is color of title to the office in ANY of the following circumstances:

- (a) There is no known appointment or election, but people are induced by circumstances of reputation or

acquiescence to suppose that he is the officer he assumes to be. Consequently, people do not inquire into his authority, and they submit to him or invoke his action;

- (b) He possessed public office under color of a known and valid appointment or election, but he failed to conform to some precedent requirement or condition (e.g., taking an oath or giving a bond);
- (c) He possessed public office under color of a known election or appointment, but such is VOID because:

- (j) He is ineligible;
 - (ii) The electing or appointing body is not empowered to do such;
 - (iii) His exercise of his function was defective or irregular; and
 - (iv) The public DOES NOT KNOW of such ineligibility, want of authority, or irregularity.
- (d) He possessed public office under color of an election or an appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such.

DISTINGUISHED FROM OTHER OFFICERS

Officer De Jure v. Officer De Facto (Asked in 2000, 2004)

	<i>De Jure</i>	<i>De Facto</i>
<i>Requisites</i>	<i>A de jure</i> office exists; He is legally qualified for the office; He is lawfully chosen to such office; He undertakes to perform the duties of such office according to law's prescribed mode.	<i>De jure</i> office; He assumed office under color of right or general acquiescence by the public; He actually and physically possessed the office in good faith.
<i>Basis of Authority</i>	Right: He has the lawful right / title to the office	Reputation: He possesses office and performs its duties under color of right, but he is not technically qualified to act in all points of law
<i>How Ousted</i>	Cannot be ousted even in a direct proceeding	In a direct proceeding (<i>quo warranto</i>); Cannot be ousted collaterally
<i>Validity of official acts</i>	Valid, subject to exceptions (e.g., acting beyond his scope of authority, etc.)	Valid as to the public until his title to the office is adjudged insufficient.
<i>Rule on Compensation</i>	Rightfully entitled to compensation; The principle "No work, no pay" is inapplicable to him.	Conditionally entitled to receive compensation: only when no de jure officer is declared; He is paid only for actual services rendered.

Officer De Facto v. Intruder

	<i>De Facto</i>	<i>Intruder</i>
<i>Nature</i>	He becomes officer with color of title under the circumstances discussed above	He possesses office and performs official acts without actual or apparent authority.
<i>Basis of Authority</i>	Color of right or title to office	None. Neither lawful title nor color of right to office.
<i>Validity of "official" acts</i>	Valid as to the public until his title to the office is adjudged insufficient	Absolutely void; His acts can be impeached at any time in any proceeding
<i>Rule on Compensation</i>	Entitled to receive compensation only when no de jure officer is declared and only for actual services rendered.	Not entitled to compensation at all.

An intruder/usurper may grow into a *de facto* officer if his assumption of office is acquiesced in, as when he continues to act for so long a time as to afford a strong presumption that he has been duly appointed or elected. [DE LEON]

OFFICE CREATED UNDER AN UNCONSTITUTIONAL STATUTE

The prevalent view is that a person appointed or elected in accordance with a law later declared to be unconstitutional may be considered *de facto* at least before the declaration of unconstitutionality.

LEGAL EFFECT OF ACTS OF DE FACTO OFFICERS

[*Monroy v. CA* (1967)]

- (1) *As regards the officers themselves:* A party suing or defending in his own right as a public officer must show that he is an officer *de jure*. It is not sufficient that he be merely a *de facto* officer.
- (2) *As regards the public and third persons:* The acts of a *de facto* officer are valid as to third persons and the public until his title to office is adjudged insufficient.

Rationale: The doctrine is intended not for the protection of the public officer, but for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of a public office.

DE FACTO OFFICER'S OFFICIAL ACTS ARE NOT SUBJECT TO COLLATERAL ATTACK

A *de facto* officer's and his acts' validity cannot be collaterally questioned in proceedings where he is not a party, or which were not instituted to determine the very question.

Remedy: Quo warranto proceedings filed by:

- (a) The person claiming entitlement to the office;
- (b) The Republic of the Philippines (represented by the Solicitor-General or a public prosecutor).

LIABILITY OF DE FACTO OFFICERS

[DE LEON]

A *de facto* officer generally has the same degree of liability and accountability for official acts as a *de jure* officer.

The *de facto* officer may be liable for all impossible penalties for ANY of the following acts:

- (1) usurping or unlawfully holding office;
- (2) exercising the functions of public office without lawful right;
- (3) ineligibility for the public office as required by law

The officer cannot excuse responsibility for crimes committed in his official capacity by asserting his *de facto* status.

RIGHT TO COMPENSATION OF DE FACTO OFFICER

General Rule: A *de facto* officer cannot sue for the recovery of salary, fees or other emoluments attached to the office, for the duties he has performed. His acts, as far as he himself is concerned, are void.

Moreover, the rightful incumbent may recover from the *de facto* officer the salary received by the latter during his wrongful tenure. A *de facto* officer, not having good title, takes the salaries at his risk and must account to the *de jure* officer for whatever salary he received during the period of his wrongful tenure, even if he occupied the office in good faith. [*Monroy v CA*, 1967]

Exception: Where there is no *de jure* officer, a *de facto* officer, who in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office. [*Civil Liberties Union v. Executive Secretary*, 1991]

Moreover, in the case of *Gen. Manager, Philippine Ports Authority v. Monserate* [G.R. No. 129616, 2002], the Court held that while the assumption of the *de jure* officer of another position under protest and acceptance of corresponding emoluments do

not constitute abandonment of her rightful office, she cannot recover full back wages for such rightful office. She is only entitled to back pay differentials between the salary rates for the lower position she assumed and the position she is rightfully entitled to, which amounts are to be paid by the *de facto* officer.

K. Termination of Official Relation

A. EXPIRATION OF THE TERM OR TENURE OF OFFICE

General rule: Upon the expiration of the officer's term, his rights, duties and authority as a public officer must ipso facto cease.

Exception: Unless he is authorized by law to hold over.

Where an office is created, or an officer is appointed, for the purpose of performing a single act or the accomplishment of a given result, the office terminates and the officer's authority ceases with the accomplishment of the purposes which called it into being.

Term of office – the time during which the officer may claim to hold the office as of right and fixes the interval after which the several incumbents shall succeed one another. It is a fixed and definite period of time to hold office, perform its functions and enjoy its privileges and emoluments until the expiration of said period.

Tenure of office – the period during which the incumbent actually holds office.

B. REACHING THE AGE LIMIT (RETIREMENT)

This mode of termination results in the compulsory and automatic retirement of a public officer.

Compulsory Retirement Age

- (1) Members of the Judiciary – 70 yrs old
- (2) Other government officers and employees – 65 yrs old [*new GSIS Charter*]
- (3) Optional retirement age – after rendition of the minimum number of years of service [*RA 1616*]

C. DEATH OR PERMANENT DISABILITY

The death of the incumbent of an office, which is by law to be filled by one person only, necessarily renders the office vacant. The public official cease to hold office upon his death and all his rights, duties and obligations pertinent to the office are extinguished.

Permanent disability covers both physical or mental disability.

D. RESIGNATION

Resignation – the act of giving up or the act of a public officer by which he declines his office and renounces the further right to use it. It is an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce and relinquish the office and the acceptance thereof by competent lawful authority [*Ortiz v. COMELEC (1988)*].

Requisites

- (1) Intention to relinquish a part of the term
- (2) Act of relinquishment
- (3) Acceptance by the proper authority, either expressly or implied

Forms of resignation

- (1) Where a law requires that resignation is to be made in any particular form, that form must be substantially complied with.
- (2) Where no such form is prescribed, no particular mode is required, but the resignation may be made by any method indicative of the purpose. It need not be in writing, unless so required by law. A written resignation, delivered to the board or officer authorized to receive it and fill the vacancy thereby created, is prima facie, but not conclusive evidence of the intention to relinquish the office.

N.B. Courtesy resignation cannot properly be interpreted as a resignation in the legal sense for it is not necessarily a reflection of a public official's intention to surrender his

position. Rather, it manifests his submission to the will of the political authority and the appointing power [*Ortiz v. COMELEC (1988)*]

When resignation is effective

- (1) Date specified in the tender
- (2) If no such date is specified, resignation shall be effective when the public officer receives notice of the acceptance of his resignation, NOT the date of the letter or notice of acceptance [*Gamboa v. CA (1981)*]

Revocation of Resignation

A resignation can be validly withdrawn before the public official is notified of its acceptance [*Republic v. Singun (2008)*].

Art. 238 of the RPC makes it an offense for any public officer who, before acceptance of his resignation, abandons his office to the detriment of the public service

Acceptance of resignation

- (a) As provided by law
- (b) If the law is silent on who shall accept and the public officer is an appointive officer, tender to the appointing authority. If elective, tender to those authorized by law

Resigning Public Officer	Accepting Authority
President and VP	Congress
Members of Congress	Respective Houses
Governor, Vice Gov, Mayor, Vice Mayor, of HUC and ICC	President
City Mayors and Vice Mayors of CCs, Municipal Mayors and Vice Mayors	Governor
Sanggunian Members	Sanggunian concerned
Elective Barangay Officials	Municipal or City Mayors
Appointive Public Officers	Appointing Authority

E. ACCEPTANCE OF AN INCOMPATIBLE OFFICE

General Rule: One who, while occupying one office, accepts another office incompatible with the first ipso facto vacates the first office.

Exceptions:

- (1) Where the public officer is authorized by law to accept the other office (ex officio capacity).
- (2) If the public officer accepts a *forbidden office*, the holding of the *second office* is absolutely void.

Rationale: It is contrary to the policy of the law that the same individual should undertake to perform inconsistent and incompatible duties.

When Incompatible

Incompatibility is to be found in the character of the offices and their relation to each other, in the subordination of one to the other and in the nature of the functions and duties which attach to them

It exists where:

- (1) There is conflict in such duties and functions, so that the performance of the duties of one interferes with the performance of the duties of the other as to render it improper from consideration of public policy for one person to retain both.
- (2) One is subordinate to the other and is subject in some degree to its supervisory power for obviously in such a situation, the design that one acts as a check on the other would be frustrated.
- (3) The Constitution or the law itself declares the incompatibility even though there is no inconsistency in the nature and functions of the offices.

F. ABANDONMENT OF OFFICE

Abandonment – voluntary relinquishment of an office by the holder of all right, title, or claim thereto with the intention of not reclaiming it or terminating his possession and control thereof.

Requisites

- (1) Intention to abandon
- (2) Overt act by which the intention is carried into effect

Distinguished from Resignation

While resignation in general is a formal relinquishment, abandonment is a voluntary relinquishment through non-user. Non-user refers to a neglect to use a privilege or a right or to exercise an easement or an office [*Municipality of San Andres, Catanduanes v. CA (1998)*]

What may Constitute as Abandonment

- (1) Abandonment may result from acquiescence by the officer in his wrongful removal [*Canonizado v. Aguirre (2001)*].
- (2) An officer or employee shall be automatically separated from the service if he fails to return to the service after the expiration of one-year leave of absence without pay. Also, officers and employees who are absent for at least 30 days without approved leave (AWOL) shall be dropped from the service after due notice [*Civil Service Rules*].

G. PRESCRIPTION OF RIGHT TO OFFICE

Under the Rules of Court, quo warranto is the proper remedy against a public officer for his ouster from office. The petition should be filed within one (1) year after the cause of such ouster or the right of the plaintiff to hold such office or position arose; otherwise, the action will be barred. The filing of an administrative action does not suspend the

period for filing the appropriate judicial proceeding.

Rationale for the one year period: Title to public office should not be subjected to uncertainties but should be determined as speedily as possible.

H. REMOVAL

Removal – ouster of an incumbent public officer before the expiration of his term. It implies that the office exists after the ouster. Another term used is *dismissal* [*De Leon*].

It is the forcible and permanent separation of the incumbent from office before the expiration of his term [*Ingles v. Mutuc (1968)*].

Modes of Removal

Removal from office may be express or implied.

- (1) Appointment of another officer in the place of the incumbent operates as a removal if the latter was notified [*De Leon*].
- (2) The transfer of an officer or employee without his consent from one office to another, whether it results in promotion or demotion, advancement or reduction in salary, is equivalent to his illegal removal or separation from the first office. [*Gloria v. Court of Appeals (2000)*]
- (3) Demotion to a lower position with a lower rate of compensation is also equivalent to removal if no cause is shown for it. [*De Guzman v. CSC (1994)*]

Limitations

- (1) Constitutional guarantee of security of tenure. No officer or employee of the civil service shall be removed or suspended except for cause provided by law [Sec. 2(3), Art IX-B, Constitution].
- (2) Removal or resignation from office is not a bar to a finding of administrative liability [*Office of the President v. Cataquiz (2011)*].

- (3) Removal not for a just cause, or non-compliance with the prescribed procedure constitutes a reversible error and entitles the officer or employee to reinstatement with back salaries and without loss of seniority rights.

Elements of Removal for Cause

- (1) The cause is a legal cause, i.e. determined by law and not the appointing power
- (2) As a general rule, the cause must be connected to the functions and duties of the office
- (3) The cause must be of a substantial nature as to directly affect the interest of the public
- (4) The removal must be after due process

Extent of President's Removal Power

- (1) With respect to non-career officers exercising purely executive functions whose tenure is not fixed by law (i.e. members of the Cabinet), the President may remove them with or without cause and Congress may not restrict such power.
- (2) With respect to officers exercising quasi-legislative or quasi-judicial functions (e.g. members of the SEC), they may be removed only on grounds provided by law to protect their independence.
- (3) With respect to constitutional officers removable only by means of impeachment, and judges of lower courts, they are not subject to the removal of the President.

I. IMPEACHMENT

See Accountability of Public Officers, *infra*

J. ABOLITION

Requisites [*Mendoza v. Quisumbing* (1990)]:

- (1) Abolition must be done in good faith
- (2) Clear intent to do away with the office
- (3) Not for personal or political reasons
- (4) Cannot be implemented in a manner contrary to law

Limitations

- (1) Except when restrained by the Constitution, the Congress has the right to abolish an office, even during the term for which an existing incumbent may have been elected. Valid abolition of office does not constitute removal of the incumbent.
- (2) No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its members [Sec. 2, Art. VIII, Constitution].
- (3) The fundamental principle afforded to civil service employees against removal "except for cause as provided by law" does not protect them against abolition of the positions held by them in the absence of any other provision expressly or impliedly prohibiting abolition thereof. [*Castillo v. Pajo* (1958)]

Reorganization – reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It could result in the loss of one's position through removal or abolition of an office. However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith; otherwise, it is void ab initio [*United Claimant Association of NEA v. NEA* (2012)]

Reorganization is valid provided they are pursued in good faith

Attrition – reduction of personnel as a result of resignation, retirement, dismissal in accordance with existing laws, death or transfer to another office [Sec. 2(a), RA 7430 *Attrition Law*]

K. CONVICTION OF A CRIME

When the penalties of perpetual or temporary absolute disqualification or penalties of perpetual or temporary special disqualification are imposed upon conviction of a crime, termination of official relation results, for one of the effects of the imposition of said penalties is the deprivation of the public office which the offender may have held.

Conviction means conviction in a trial court. It contemplates a court finding guilt beyond reasonable doubt followed by a judgment upholding and implementing such finding.

L. NON-USER

The office of any official elected who fails or refuses to take his oath of office within six months from his proclamation shall be considered vacant, unless said failure is for a cause or causes beyond his control [Sec. 11, BP 881]

M. RECALL

It is a method of removal prior to the expiration of the term of a public officer on account of loss of confidence exercised directly by the registered voters of a local government unit.

N. FILING OF A CERTIFICATE OF CANDIDACY BY AN APPOINTIVE OFFICIAL

In *Quinto v. COMELEC* (2010), the Supreme Court upheld the constitutionality of Sec. 13 (3) of RA 9369 and Sec. 66 of BP 881 which states that an appointive official is *ipso facto* resigned from his office upon the filing of a certificate of candidacy. An *elective* official who files a certificate of candidacy is not deemed resigned from his position.

Rationale: Substantial distinctions exist between elective officials and appointive officials. The former occupy their office by

virtue of the mandate of the electorate. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Also, under the Administrative Code of 1987, appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take part in any election except to vote. Elective officials, by the very nature of their positions, may engage in partisan political activities.

L. The Civil Service

A. SCOPE

Embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned and controlled corporations with original charters [*Sec. 2(1), Art. IX-B, Constitution*]

B. JURISDICTION OF THE CIVIL SERVICE COMMISSION (CSC)

EXCLUSIVE JURISDICTION

- (1) Disciplinary cases
- (2) Cases involving "personnel action" affecting the Civil Service employees:
 - (a) Appointment through certification
 - (b) Promotion
 - (c) Transfer
 - (d) Reinstatement
 - (e) Reemployment
 - (f) Detail, reassignment
 - (g) Demotion
 - (h) Separation
- (3) Employment status
- (4) Qualification standards

N.B. *As to the power of the CSC to review an appointee's qualifications.* The only function of the CSC is to review the appointment in the light of the requirements of the Civil Service Law, and when it finds the appointee to be qualified and all other legal requirements have been otherwise satisfied, it has no choice but to attest to the appointment. [*Lapid v. CSC (1991)*]

Limitations

- (1) It cannot order the replacement of the appointee simply because it considers another employee to be better qualified. [*Lapinid v. CSC (1991)*]
- (2) The CSC cannot co-manage or be a surrogate administrator of government offices and agencies.
- (3) It cannot change the nature of the appointment extended by the appointing officer. [*Luego v. CSC (1986)*]

C. APPOINTMENTS TO THE CIVIL SERVICE

1. CLASSIFICATION OF POSITIONS IN THE CIVIL SERVICE

- (a) **Career Service** – characterized by (a) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications, (b) opportunity for advancement to higher career positions, and (c) security of tenure.

General Rule: Appointments to the Career Service is to be determined as far as practicable by competitive examination.

Exceptions: Appointments to the following positions are exempt from the competitive examination requirement

- (i) *Policy determining* - where the officer is vested with the power of formulating policies for the government or any of its agencies, subdivisions, or instrumentalities.
- (ii) *Primarily Confidential* – the officer enjoys primarily such close intimacy with the appointing authority which insures freedom intercourse without embarrassment or freedom of misgiving of betrayal of personal trust on confidential matters of the state [*De Los Santos v. Mallare (1950)*]. The position characterized by the close proximity of positions of the appointee as well as the high degree of trust and confidence inherent in their

relationship [*Civil Service Comm'n v. Javier (2008)*].

- (iii) *Highly Technical* – requires possession of technical skill or training in a superior degree. (e.g. City Legal Officer)

N.B. It is the *nature* of the position which determines whether a position is policy determining, primarily confidential or highly technical

- (b) **Non-career Service** – Entrance on bases other than those of the usual tests. Tenure limited to a period specified by law or which is coterminous with the appointing authority or the duration of a particular project. (i.e. elective officials, Department Heads and Members of Cabinet)

2. RECALL OF APPOINTMENTS

Grounds [Admin. Code IRR, Rule VI, § 20; *De Rama v. CA (2001)*]

- (1) Non-compliance with the procedures/criteria provided by the agency's Merit Promotion Plan
- (2) Failure to pass through the agency's Selection/Promotion Board
- (3) Violation of existing collective agreement between management and employees relative to promotion
- (4) Violation of other existing civil service laws, rules and regulations

N.B. The above grounds are available despite initial approval by the CSC of the appointment.

DISTINGUISHED FROM RECALL UNDER THE LOCAL GOVERNMENT CODE

The CSC has the power to recall an appointment which has been initially approved when it is shown that the same was issued in disregard of pertinent CSC laws, rules and regulations. In contrast, recall under Sec 69-75 of the Local Government Code is a mode of removal of a public official by the people before the end of his term of office. [*Garcia v. COMELEC, (1993)*]

3. APPOINTMENTS NOT REQUIRING CSC APPROVAL

- (1) Presidential appointments
 - (a) Members of the AFP
- (2) Police forces
- (3) Firemen
- (4) Jail guards

4. LIMITATIONS ON POWER TO APPOINT

- (1) Constitutional limitations
 - (a) Prohibition on nepotism appointments by the President
 - (b) Midnight appointments ban
 - (c) Grant of power of appointment to officers and bodies other than the President
 - (d) Grant of exclusive power to appoint officials and employees of the judiciary to the SC
 - (e) Recommendation of the JBC for appointments to the SC and lower courts
 - (f) Grant of exclusive power to appoint officials and employees of the Constitutional Commissions to the same
 - (g) One-year appointments ban for losing candidates
 - (h) Non-appointment or designation of elective officials
 - (i) Prohibition on holding multiple offices for appointive officials
 - (j) Grant of exclusive power to appoint officials and employees of the Ombudsman to the same
 - (k) Recommendation of the JBC for appointments of the Ombudsman and his deputies
- (2) Limitations found in statutes
- (3) Restrictions as developed under jurisprudence; e.g.
 - (a) Appointing authority cannot preempt appointing power of successor [Aytona v. Castillo]
 - (b) Appointing authority cannot appoint himself to a vacancy
 - (c) No appointment to a post which is not vacant

D. PERSONNEL ACTIONS

1. PROMOTION

Promotion – movement from one position to another with increase in duties and responsibilities as authorized by law and is usually accompanied by an increase in pay.

(a) Next-in-rank Rule

The person next in rank shall be given *preference* in promotion when the position immediately above his is vacated.

BUT the appointing authority still exercises discretion and is not bound by this rule, although he is required to specify the “special reason or reasons” for not appointing the officer next-in-rank.

(b) Automatic Reversion Rule

All appointments involved in a chain of promotions must be submitted simultaneously for approval by the Commission.

The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in the lower positions and automatically restores them to their former positions.

However, the affected persons are entitled to payment of salaries for services actually rendered at a rate fixed in their promotional appointments. [Sec. 13 of the Omnibus Rules Implementing Administrative Code]

Requisites:

- (a) Series of promotions
- (b) All promotional appointments are simultaneously submitted to the Commission for approval
- (c) The Commission disapproves the appointment of a person to a higher position.

2. TRANSFER

Transfer – movement from one position to another which is of equivalent rank, level or salary without break in service.

This may be imposed as an administrative remedy.

General Rule: If transfer is *without* consent, it violates security of tenure.

Exceptions

(1) Temporary Appointee

(2) Career Executive Service Personnel whose status and salaries are based on ranks, *not* on position.

3. REINSTATEMENT

Reinstatement – technically the issuance of a new appointment and is discretionary on the part of the appointing power.

It cannot be the subject of an application for a writ of mandamus.

Requisites for validity

- (1) Any permanent appointee of a career service position
- (2) No commission of delinquency or misconduct, and is not separated.
- (3) The reinstatement is to a position in the same level for which the officer is qualified.

Reinstatement has the same effect as executive clemency, which completely obliterates the adverse effects of the administrative decision which found him guilty of dishonesty. He is restored *ipso facto* upon grant of such. Application for reinstatement = unnecessary.

4. DETAIL

Detail – movement of an employee from one agency to another without the issuance of an appointment.

Requisites for validity

- (1) Only for a limited period.
- (2) Only for employees occupying professional, technical and scientific positions.
- (3) Temporary in nature.

5. REASSIGNMENT

An employee may be reassigned from one organizational unit to another in the SAME agency.

It is a management prerogative of the CSC and any department or agency embraced in the Civil Service and does not constitute removal without cause.

Requisites for validity

- (1) No reduction in rank, status or salary.
- (2) The reassignment is from one organizational unit to another in the *same* agency.
- (3) Should have a definite date or duration (c.f. Detail). Otherwise, a floating assignment would be tantamount to a diminution in status or rank.

6. REEMPLOYMENT

Names of persons who have been appointed permanently to positions in the career service and who have been separated as a result of reduction in force and/or reorganization, shall be entered in a list from which selection for reemployment shall be made.

M. Accountability of Public Officers

A. IMPEACHMENT

Impeachment – method of national inquest into the conduct of public men.

It is the power of Congress to remove a public official for serious crimes or misconduct as provided in the Constitution [*Corona v. Senate* (2012)].

Purpose: To protect the people from official delinquencies or malfeasances. It is primarily intended for the protection of the State, not for the punishment of the offender.

1. IMPEACHABLE OFFICERS

- (1) President
- (2) Vice-President
- (3) Members of the Supreme Court
- (4) Members of the Constitutional Commissions
- (5) Ombudsman

All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Sec. 2, Art. XI, Constitution).

2. GROUNDS FOR IMPEACHMENT

- (1) Culpable violation of the Constitution
- (2) Treason
- (3) Bribery
- (4) Graft and corruption
- (5) Other high crimes, or
- (6) Betrayal of public trust.

3. PROCEDURE

The House of Representatives has the sole power to initiate all cases of impeachment while the Senate sits as a court for the trial of impeachment cases.

No impeachment proceedings shall be initiated against the same official more than once within a period of one year. [Sec. 3, Art. XI, Constitution]

The term “to initiate” refers to:

- (1) The filing of the impeachment complaint, coupled with
- (2) Congress’ taking initial action of said complaint (i.e. referral to the House Committee on Justice) [*Francisco v. House of Representatives* (2003)].

4. JUDGMENT

Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law. [Sec. 3, Art. XI, Constitution]

B. OMBUDSMAN

[AGPALO, 2005]

1. FUNCTIONS

Powers and Functions under RA 6770

- (1) Investigate any act or omission of any public official, employee, office or agency which appears to be illegal, unjust, improper, or inefficient. This may be done by the Ombudsman on its own or upon complaint.
- (2) Direct any public official or employee, or any government subdivision, agency or instrumentality, as well as of any government-owned or controlled corporation with original charter:
 - (a) To perform and expedite any act or duty required by law, or
 - (b) To stop, prevent, and correct any abuse or impropriety in the performance of duties
- (3) Direct the officer concerned:

- (a) To take appropriate action against a public official or employee at fault, and
 - (b) To recommend the latter's removal, suspension, demotion, fine, censure, or prosecution, and
 - (c) To ensure compliance therewith.
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties. The Ombudsman can also report any irregularity to the Commission on Audit for appropriate action.
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law (*Sec. 13, Art. XI, Const.*)
- (9) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;
- (10) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

- (11) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;
- (12) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein (*For Nos. 9-12, Sec. 15, RA 6770*)

Administrative Jurisdiction

General Rule: The Office of the Ombudsman has disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries. (*Sec. 21, RA 6770*)

Exceptions: The Ombudsman has no disciplinary power over the following (*Sec. 21, RA 6770*)

- (1) Officials who may be removed only by impeachment
- (2) Members of Congress
- (3) Members of the Judiciary

However, the Office of the Ombudsman has the power to investigate any serious misconduct in office committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted. (*Sec. 22, RA 6770*)

N.B. The disciplinary power of the Ombudsman is not exclusive but is shared with other disciplinary authorities of the government.

The disciplinary power of the Ombudsman over elective officials is concurrent with the power vested in the officials specified in the Local Government Code of 1991. [*Hagad v. Dozo-Dadole, (1995)*]

Preventive Suspension

The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation:

- (1) If in his judgment the evidence of guilt is strong, and
- (2) Either of the following are present:
 - (a) The charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty;
 - (b) The charges would warrant removal from the service; or
 - (c) The respondent's continued stay in office may prejudice the case filed against him. [Sec. 24, RA 6770]

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided. (Sec. 24, RA 6770)

Prior notice and hearing is not required before suspension may be meted out. Suspension is not a punishment or penalty but only a preventive measure to prevent the respondent from using his position or office to influence or intimidate prospective witnesses or tamper with the records which may be vital in the prosecution of the case against them.

Criminal Jurisdiction

The Ombudsman exercises *primary jurisdiction* to investigate any act or omission of the public officer in criminal cases cognizable by the Sandiganbayan

It has *concurrent jurisdiction* with other investigative agencies with respect to criminal cases involving public officers cognizable by regular courts [Office of the Ombudsman v. Rodriguez, G.R. No. 172700 (2010)].

2. JUDICIAL REVIEW IN ADMINISTRATIVE PROCEEDINGS

Remedy: Petition for review under Rule 43 of the Rules of Court with the Court of Appeals.

N.B. The second paragraph of Sec. 14, RA 6770, which states that "[n]o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, *except the Supreme Court*, on pure question of law," is *unconstitutional*. Effectively, Congress increased the appellate jurisdiction of the Supreme Court without its advice and concurrence. By confining the remedy to a Rule 45 appeal, the provision takes away the remedy of certiorari, grounded on errors of jurisdiction, in denigration of the judicial power constitutionally vested in courts [Carpio-Morales v. Court of Appeals, G.R. No. 217126-27 (2015)].

Decisions or resolutions of the Ombudsman in administrative cases absolving the respondent of the charge or imposing upon him the penalty of public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, is final and unappealable. (Agpalo, 2005)

3. JUDICIAL REVIEW IN PENAL PROCEEDINGS

General Rule: Courts cannot review the exercise of discretion of the Ombudsman in prosecuting or dismissing a criminal complaint filed before it [Loquias v. Ombudsman, G.R. No. 139396 (2000)].

Exception: When the Ombudsman's findings are tainted with grave abuse of discretion.

In all other cases, the decision shall become final after the expiration of 10 days from receipt thereof by the respondent, unless a motion for reconsideration or a petition for review is filed with the CA pursuant to Rule 43 of the Rules of Court. (Agpalo, 2005)

See Carpio-Morales v. Court of Appeals (2015), *supra*.

C. SANDIGANBAYAN

1. NATURE AND COMPOSITION

The Sandiganbayan is created under PD 1606 as amended by RA 8249. It is a special court, of the same level as the Court of Appeals and possessing all the inherent powers of a court of justice.

It is composed of a presiding justice and fourteen associate justices who shall be appointed by the President.

2. EXCLUSIVE ORIGINAL JURISDICTION

- (1) Over the following crimes, when committed by public officials and employees classified as Salary Grade 27 or higher:
 - (a) Violations of R.A. No. 3019 and No. 1379;
 - (b) Crimes committed by public officers and employees embraced in Chapter II, Sec. 2, Title VII, Book II of the Revised Penal Code;
 - (c) Other offenses or felonies, whether simple or complexed with other crimes, committed in relation to their office.
- (2) Civil and criminal cases filed pursuant to and in connection with Executive Orders No. 1,2, 14, and 14-a issued in 1986

In the absence of any allegation that the offense charged was necessarily connected with the discharge of the duties or functions of a public officer, the ordinary court, not the Sandiganbayan, has jurisdiction to hear and decide the case.

What is controlling is not whether the phrase "committed in relation to public office" appears in the Information. What determines the jurisdiction of the Sandiganbayan is the specific factual allegation in the Information that would indicate close intimacy between the discharge of the accused's official duties and the

commission of the offense charged in order to qualify the crime as having been committed in relation to public office. The relation between the crime and the office must be direct and not accidental, that is, the relation has to be such that, in the legal sense, the offense cannot exist without the office.

3. OFFICIALS AND PRIVATE INDIVIDUALS SUBJECT TO ITS JURISDICTION

Under Section 4(a, b) of PD No. 1606, as amended, the Sandiganbayan shall exercise exclusive original jurisdiction over the cases mentioned in (1) above where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity at the time of the commission of the offense:

- (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the *Compensation and Position Classification Act of 1989 (R.A. No. 6758)*, specifically including:
 - (a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads;
 - (b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;
 - (c) Officials of the diplomatic service occupying the position of consul and higher;
 - (d) Philippine army and air force colonels, naval captains, and all officers of higher rank;
 - (e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

- (f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;
- (2) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;
- (3) Members of Congress and officials thereof classified as Grade "27" and up under the Compensation and Position Classification Act of 1989;
- (4) Members of the judiciary without prejudice to the provisions of the Constitution;
- (5) Chairpersons and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and
- (6) All other national and local officials classified as Grade "27" and higher under the *Compensation and Position Classification Act of 1989*.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or -controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

4. EXCLUSIVE APPELLATE JURISDICTION

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction.

5. APPELLATE JURISDICTION OF THE SUPREME COURT

The appellate jurisdiction of the Supreme Court is limited to questions of law over decisions and final orders of the Sandiganbayan [*Republic v. Sandiganbayan* (2002)].

D. ILL-GOTTEN WEALTH

Ill-gotten wealth – any asset, property, business enterprise or material possession of any person acquired by himself directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

- (1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- (2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
- (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries,
- (4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- (5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests, or
- (6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines. (Sec. 1, RA 7080).

Recovery of Ill-gotten Wealth

The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel [Sec. 15, Art. XI, Constitution]

N.B. This provision applies only to *civil* actions for recovery of ill-gotten wealth and not to criminal cases. Thus, prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth in the said provision may be barred by prescription [Presidential Ad-hoc Fact Finding Committee on Behest Loans v. Desierto (1999)]

Plunder [Sec. 2, RA 7080]

Punishable Acts

- (1) Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other person, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts in the aggregate amount or total value of at least P75,000,000.00
- (2) Any person who participated with the said officer in the commission of plunder shall likewise be punished.

Penalty

Life imprisonment with perpetual absolute disqualification from holding any public office. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [AGPALO]

N. Term Limits

See Local Government reviewer, *supra*, for the rules on term limits summarized in *Abundo v. COMELEC*.

A. ALL ELECTIVE LOCAL OFFICIALS, EXCEPT BARANGAY OFFICIALS [Sec. 8, Art. X, Constitution; Sec. 43 LGC]

Term of office: 3 years from noon of June 30, 1992 or the date provided by law

All local officials first elected during the local elections immediately following the ratification of the 1987 Constitution shall serve until noon of June 30, 1992;

- (1) No official shall serve for more than 3 consecutive terms for the same position;
- (2) Voluntary renunciation of the office for any length of time is *not* an interruption in the continuity of his service for the full term for which he was elected

B. BARANGAY AND SANGGUNIANG KABATAAN OFFICIALS [Sec. 2, RA 9164]

Term of office: 3 years

No barangay elective official shall serve for more than 3 consecutive terms in the same position

- (1) Reckoned from the 1994 barangay elections
- (2) Voluntary renunciation of office for any length of time shall *not* be considered as an interruption

POLITICAL LAW

ADMINISTRATIVE LAW

I. General Principles

A. DEFINITION

Administrative Law is that branch of modern law under which the executive department of the government, acting in a quasi-legislative or quasi-judicial capacity, interferes with the conduct of the individual for the purpose of promoting the well-being of the community [*Roscoe Pound, cited in Irene R. Cortes, Philippine Administrative Law: Cases and Materials, (1984)*]

Administrative law is the law concerning the powers and procedures of administrative agencies, including specially the law governing judicial review of administrative actions [*K. Davis, Administrative Law Treatise 1 (1958), cited in DE LEON (2013)*].

B. HISTORICAL CONSIDERATIONS

B.1. Why did administrative agencies come about?

- (1) Growing complexities of modern life
- (2) Multiplication of number of subjects needing government regulation; and
- (3) Increased difficulty of administering laws [*Pangasinan Transportation v. Public Service Commission (1940)*]

B.2. Why are administrative agencies needed?

Because the government lacks:

- (1) Time (to respond to problems)
- (2) Expertise, and
- (3) Organizational aptitude for effective and continuing regulation of new developments in society [Stone].

II. Administrative Agencies

A. DEFINITION

Administrative Agencies are the organs of government, other than a court and other than the legislature, which affect the rights of private parties either through adjudication or through rule-making [NACHURA]

Administrative agency - may be described as a body endowed with quasi-legislative and quasi-judicial powers for the purpose of enabling it to carry out the laws entrusted for enforcement or execution [CRUZ]

Admin Code, Book VII, Sec. 2.

Definitions. - As used in this Book:

(1) "Agency" includes any department, bureau, office, commission, authority or officer of the National Government authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases; research institutions with respect to licensing functions; government corporations with respect to functions regulating private right, privileges, occupation or business; and officials in the exercise of disciplinary power as provided by law.

An administrative agency is defined as "[a] government body charged with administering and implementing particular legislation. Examples are workers' compensation commissions ... and the like. ... The term 'agency' includes any department, independent establishment, commission, administration, authority board or bureau ... [*Republic v. CA (Aug. 5, 1991), citing Black's Law Dictionary*]

B. WHEN IS AN AGENCY ADMINISTRATIVE?

Where its function is primarily regulatory even if it conducts hearings and determines controversies to carry out its regulatory duty.

On its rule-making authority, it is administrative when it does not have discretion to determine what the law shall be but merely prescribes details for the enforcement of the law.

C. MANNER OF CREATION

- (1) Constitutional Agencies – those created by the Constitution

(E.g. CSC, COMELEC, COA, CHR, Judicial and Bar Council, and NEDA)

- (2) Statutory Agencies

(E.g. NLRC, SEC, PRC, Social Security Commission, Commission on Immigration and Deportation, Philippine Patent Office, Games and Amusement Board, Board of Energy, and Insurance Commission)

- (3) Executive Orders/ Authorities of law

(E.g. Fact-finding Agencies)

C.1. Executive Power to Create Ad Hoc Committees

The Executive is given much leeway in ensuring that our laws are faithfully executed. As stated above, the powers of the President are not limited to those specific powers under the Constitution. One of the recognized powers of the President granted pursuant to this constitutionally mandated duty is the power to create ad hoc committees. This flows from the obvious need to ascertain facts and determine if laws have been faithfully executed. [...] There is no usurpation on the part of the Executive of the power of Congress to appropriate funds, because there will be no appropriation, but only an allotment or allocation of existing

funds already appropriated. [*Biraogo v. Phil. Truth Commission*, (2010)]

D. KINDS

- (1) Government grant or gratuity, special privilege (e.g. Bureau of Lands, Phil. Veterans Admin., GSIS, SSS, PAO);
- (2) Carrying out the actual business of government (e.g. BIR, Bureau of Customs, Bureau of Immigration, Land Registration Authority);
- (3) Service for public benefit (e.g. Phil Post, PNR, MWSS, NFA, NHA);
- (4) Regulation of businesses affected with public interest (e.g. Insurance Commission, LTFRB, NTC, HLURB);
- (5) Regulation of private businesses and individuals (e.g. SEC);
- (6) Adjustment of individual controversies because of a strong social policy involved (e.g. ECC, NLRC, SEC, DAR, COA).

III. Powers of Administrative Agencies

The powers of administrative agencies are:

- (1) Quasi-legislative (Rule-making)
- (2) Quasi-judicial (Adjudicatory) and
- (3) Determinative powers
 - a. Enabling powers - permit the doing of an act which the law undertakes to regulate and which would be unlawful without government approval (e.g. issuance of licenses to engage in particular business or occupation)
 - b. Directing powers - order the performance of particular acts to ensure compliance with the law and often exercised for corrective purposes
 - (i) dispensing powers - allows the administrative officer to relax the general operation of a law or exempt from performance of a general duty
 - (ii) examining powers - enables the administrative body to inspect the records and premises, and investigate the activities, of persons or entities coming under its jurisdiction
 - (iii) summary powers - those involving use by administrative authorities of force upon persons or things without necessity of previous judicial warrant

[CRUZ]

Does the grant of such powers to Administrative Agencies violate the Doctrine of Separation of Powers? No.

Administrative agencies became the catch basin for the residual powers of the three branches. The theory of the separation of powers is designed to forestall overaction resulting from concentration of power. However with the growing complexity of modern life, there is a constantly growing tendency toward the delegation of greater

powers by the legislature. [*Pangasinan Transportation v. Public Service Commission* (1940)]

Doctrine of Necessary Implication – [W]hat is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis*. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, semper inest et minus*. [*Chua v. CSC* (1993)]

A. QUASI-LEGISLATIVE (RULE-MAKING) POWER

(Asked 5 times in the Bar)

The authority delegated by the law-making body to the administrative agency to *adopt rules and regulations* intended to carry out the provisions of a law and implement a legislative policy. [CRUZ]

Doctrine of Subordinate Legislation - Power to promulgate rules and regulations is only limited to carrying into effect what is provided in the legislative enactment.

Non-Delegation Doctrine – *Potestas delegata non delegare potest*. What has been delegated cannot be delegated.

The general rule barring delegation of legislative powers is subject to the following recognized limitations or exceptions:

- (1) Delegation of tariff powers to the President under Section 28 (2) of Article VI of the Constitution;
- (2) Delegation of emergency powers to the President under Section 23 (2) of Article VI of the Constitution;

- (3) Delegation to the people at large;
- (4) Delegation to local governments; and
- (5) Delegation to administrative bodies

[*Abakada v. Ermita* (2005)]

A.1 LEGISLATIVE DELEGATION

i. Requisites for a Valid Delegation

- (1) **Completeness Test** – The law must be *complete in itself* and must set forth the *policy* to be executed
- (2) **Sufficient Standards Test** – The law must fix a *standard*, the limits of which are *sufficiently* determinate or determinable, to which the delegate must conform. [See *Abakada v. Ermita* (2005)]

The legislature may delegate to executive officers or bodies the power to determine certain facts or conditions, or the happening of contingencies, on which the operation of a statute is, by its terms, made to depend, but the legislature must prescribe sufficient standards, policies or limitations on their authority [*Abakada v. Ermita* (2005)]

What is a sufficient standard:

- (1) Defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it; and
- (2) Indicates the circumstances under which the legislative command is to be effected. [*Santiago v. COMELEC* (1997); *Abakada v. Ermita* (2005)]

Forms of the sufficient standard:

- (1) Express
- (2) Implied [*Edu v. Ericta* (1970)]
- (3) Embodied in other statutes on the same matter and not necessarily in the same law being challenged. [*Chiongbian v. Orbos* (1995)]

The power conferred upon an administrative agency to issue rules and regulations necessary to carry out its functions has been held to be an adequate source of authority to delegate a particular function, unless by

express provision of the Act or by implication it has been withheld [*Realty Exchange Venture Corp. V. Sendino* (1994)]

Kinds of Administrative Rules and Regulations

- (1) **Supplementary legislation** – pertains to rules and regulations to fix details in the execution of a policy in the law. e.g. IRRs of the Labor Code.
- (2) **Interpretative legislation** – pertains to rules and regulations construing or interpreting the provisions of a statute to be enforced and they are binding on all concerned until they are changed, e.g. BIR Circulars.

A.2. LEGISLATIVE RULES AND INTERPRETATIVE RULES, DISTINGUISHED

Legislative Rules	Interpretative Rules
Promulgated pursuant to its quasi-legislative/ rule-making functions.	Passed pursuant to its quasi-judicial capacity.
Create a new law, a new policy, with the force and effect of law.	Merely clarify the meaning of a pre-existing law by inferring its implications.
Need publication.	Need not be published.
So long as the court finds that the legislative rules are within the power of the administrative agency to pass, as seen in the primary law, then the rules bind the court. The court cannot question the wisdom or correctness of the policy contained in the rules.	The court may review the correctness of the interpretation of the law given by the administrative body, and substitute its own view of what is correct. If it is not within the scope of the administrative agency, court can only invalidate the same but not substitute its decision or interpretation or give its own set of rules.
Due process means that the body observed the proper procedure in passing rules.	Due process involves whether the parties were afforded the opportunity to be notified and heard before the issuance of the ruling.

Notice and Hearing

In the Exercise of Quasi-judicial functions

As a general rule, notice and hearing, as the fundamental requirements of procedural due process, are essential only when an administrative body exercises its quasi-judicial function.

In the Exercise of Quasi-judicial function

In the performance of its executive or legislative functions, such as issuing rules and regulations, an administrative body need not comply with the requirements of notice and hearing. [*Corona v. United Harbor Pilots Association of the Philippines*, (1997), citing *PHILCOMSAT v. Alcuaz* (1989)]

In the issuance of interpretative rulings

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed.

When, upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law **but substantially adds to or increases the burden of those governed**, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law [*Commissioner of Internal Revenue v. CA* (1996)]

Certain cigarette brands were initially treated as other locally manufactured cigarettes subject to 45% ad valorem tax. BIR issued Revenue Memorandum Circular (RMC) 37-93 placing these brands under a different category subject to an increased rate of 55% ad valorem tax.

HELD: Evidently, in order to place "Hope Luxury," "Premium More," and "Champion" cigarettes within the scope of the amendatory law and subject them to an increased tax rate, the now disputed RMC 37-93 had to be issued. In so doing, the BIR not simply interpreted the law; verily, it legislated under its quasi-legislative authority. The due

observance of the requirements of notice, of hearing, and of publication should not have been then ignored. [*Commissioner of Internal Revenue v. CA* (1996)]

COMELEC issued Resolution No. 9615 limiting the broadcast and radio advertisements of candidates and political parties for national election positions to an aggregate total of one hundred twenty (120) minutes and one hundred eighty (180) minutes, respectively.

HELD: Resolution No. 9615 needs prior hearing before adoption. The new Resolution introduced a radical change in the manner in which the rules on airtime for political advertisements are to be reckoned. As such there is a need for adequate and effective means by which they may be adopted, disseminated and implemented. In this regard, it is not enough that they be published – or explained – after they have been adopted. For failing to conduct prior hearing before coming up with Resolution No. 9615, said Resolution, specifically in regard to the new rule on aggregate airtime is declared defective and ineffectual. [*GMA Network, Inc. v. COMELEC* (2014)]

Restrictions on interpretative regulations:

- (1) does not change the character of a ministerial duty;
- (2) does not involve unlawful use of legislative or judicial power.

Administrative Interpretations: May eliminate construction and uncertainty in doubtful cases. When laws are susceptible of two or more interpretations, the administrative agency should make known its official position.

Administrative construction/interpretation not binding on the court as to the proper construction of a statute, but generally it is given great weight, has a very persuasive influence and may actually be regarded by the courts as the controlling factor.

Administrative interpretation is merely advisory; Courts finally determine what the law means [*Victorias Milling Co., Inc. v. Social Security Commission (1962)*]

Contingent legislation – Pertains to rules and regulations made by an administrative authority on the existence of certain facts or things upon which the enforcement of the law depends.

A.3. REQUISITES FOR VALIDITY

Requisites of a valid administrative rule

- (1) Within the scope or authority of law
- (2) Authorized by law
- (3) Reasonable

To be valid, such rules and regulations must be reasonable and fairly adapted to secure the end in view. If shown to bear no reasonable relation to the purposes for which they are authorized to be issued, then they must be held to be invalid. [*Lupangco v. CA, (1988)*]

- (4) Promulgated in accordance with prescribed procedure

Tests to determine validity of rules [DE LEON]

- a) If it exceeds the authority conferred to it;
- b) If it conflicts with the governing statute;
- c) If it extends or modifies the statute;
- d) If it has no reasonable relationship to the statutory purpose;
- e) If it is arbitrary or unreasonable or unconstitutional.

i. Publication Rules

- (1) Administrative rules and regulations are subject to the publication and effectivity rules of the Admin Code.
- (2) *Publication Requirement*: EO 200 (Art. 2, Civil Code) requires publication of laws in the Official Gazette or in a newspaper of general circulation. Publication is indispensable, especially if the rule is general.

Publication is mandatory for the following to be effective:

- (1) Laws not only of general application, but also laws of local application, private laws
- (2) Presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution, including even those naming a public place after a favored individual or exempting him from certain prohibitions or requirements
- (3) Administrative rules and regulations enforcing or implementing existing law pursuant also to a valid delegation
- (4) City charters
- (5) Circulars issued by the Monetary Board not merely interpreting but "filling in the details" of the Central Bank Act which that body is supposed to enforce

Publication is not necessary for the following to be effective:

- (1) Interpretative regulations
- (2) Regulations which are merely internal in nature (regulating only the personnel of the administrative agency and not the published)
- (3) Letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties
- (4) Internal instructions issued by an administrative agency
- (5) Municipal ordinances which are governed by the Local Government Code [*Tañada v. Tuvera, (1986)*]

(3) Filing Requirement

Admin. Code, Bk. VII, Sec. 3. Filing. -

(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons. [...]

The Administrative Code of 1987, particularly Section 3 thereof, expressly requires each agency to file with the Office of the National Administrative Register (ONAR) of the University of the Philippines Law Center three certified copies of every rule adopted by it. Administrative issuances which are not published or filed with the ONAR are ineffective and may not be enforced. [*GMA v. MTRCB (2007)*]

(4) *Effectivity*: 15 days after filing *and* publication

Admin. Code, Bk. VII, Sec. 4. Effectivity. - In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

Note:

(1) The Admin. Code requires *filing*.

(2) The Civil Code requires *publication*. [*supra*]

Because the Admin. Code does not preclude other rule-making requirements provided by law (i.e. the Civil Code), *both* publication and filing must be satisfied before the 15 day-count begins.

These requirements of publication and filing were put in place as safeguards against

abuses on the part of lawmakers and as guarantees to the constitutional right to due process and to information on matters of public concern and, therefore, require strict compliance. Failure to comply with the requirements of publication *and* filing of administrative issuances renders said issuances ineffective. [*Republic v. Pilipinas Shell Petroleum (2008)*]

Exceptions:

- (1) Different date is fixed by law or specified in the rule.
- (2) In case of imminent danger to public health, safety and welfare.

ii. Penal Rules

Admin. Code, Bk. VII, Sec. 6. Omission of Some Rules. - [...] (2) Every rule establishing an offense or defining an act which, pursuant to law is punishable as a crime or subject to a penalty shall in all cases be published in full text.

General Rule: Rules must *not* provide penal sanctions

Exception: "A violation or infringement of a rule or regulation validly issued can constitute a crime punishable as provided in the authorizing statute and by virtue of the latter." [*People v. Maceren (1977)*]

For an administrative regulation to have the force of penal law:

- (1) The violation of the administrative regulation must be made a crime by the delegating statute itself; and
- (2) The penalty for such violation must be provided by the statute itself [*Perez vs. LPG Refillers Association of the Philippines, Inc., (2006)*, citing *U.S. v. Panlilio (1914)*]

Penal laws and regulations imposing penalties must be published before it takes effect [*People v. Que Po Lay (1954)*]

Can administrative bodies make penal rules? NO. Penal statutes are exclusive to the legislature and cannot be delegated. Administrative rules and regulations must not include, prohibit or punish acts which the law does not even define as a criminal act. [*People v. Maceren (1977)*]

A.4. POWER TO AMEND, REVISE, ALTER OR REPEAL RULES

Following the doctrine of necessary implication, [t]he grant of express power to formulate implementing rules and regulations must necessarily include the power to amend, revise, alter, or repeal the same. [*Yazaki Torres Manufacturing, Inc. v. CA (2006)*]

B. QUASI-JUDICIAL (ADJUDICATORY) POWER (Asked 4 times in the Bar)

The power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself. [*Smart Communications v. NTC (2003)*]

B.1. SOURCE

Incidental to the power of regulation but is often expressly conferred by the legislature through specific provisions in the charter of the agency.

.2. DISTINCTIONS FROM JUDICIAL PROCEEDINGS

Kind of Proceedings	Adminis- trative	Judicial
Nature of Proceedings	Inquisitorial	Adversarial
Rules of Procedure	Liberally applied	Follow technical rules in the Rules of Court
Nature and Extent of Decision	Decision limited to matters of general concern	Decision includes matters brought as issue by the parties
Parties	The agency itself may be a party to the proceedings before it	The parties are only the private litigants

Distinguished from Investigative Power [DE LEON]

The purpose of an investigation is to discover, find out, learn, obtain information. Nowhere included is the notion of settling, deciding or resolving controversies in the facts inquired into by application of the law to the facts established by the inquiry

Distinguished from Legislative or Rule-Making Power [DE LEON]

- (1) Quasi-judicial action involves enforcement of liabilities as they stand on present or past facts and under laws supposed to exist, while quasi-legislation looks to the future and changes existing conditions by making a new rule to be applied prospectively.
- (2) Adjudication applies to named persons or to specific situations while the legislation lays down general regulations that apply to classes of persons or situations.

Requisites for a Valid Exercise

- (1) Jurisdiction
- (2) Due process

General Rule: A tribunal, board or officer exercising judicial functions acts without jurisdiction if no authority has been conferred to it by law to hear and decide cases.

- (1) Jurisdiction to hear is explicit or by necessary implication, conferred through the terms of the enabling statute.
- (2) Effect of administrative acts outside jurisdiction—*Void*.
- (3) Rationale: They are mere creatures of law and have no general powers but only such as have been conferred upon them by law.

B.3. POWERS INCLUDED IN QUASI-JUDICIAL FUNCTION

Admin. Code, Bk. VII, Sec. 13. Subpoena. - In any contested case, the agency shall have the power to require the attendance of witnesses or the production of books, papers, documents and other pertinent data, upon request of any party before or during the hearing upon showing of general relevance. Unless otherwise provided by law, the agency may, in case of disobedience, invoke the aid of the Regional Trial Court within whose jurisdiction the contested case being heard falls. The Court may punish contumacy or refusal as contempt.

- (1) Subpoena Power – In any contested case, the agency shall have the power to require the attendance of witnesses or the production of books, papers, documents and other pertinent data. [Sec. 13, Bk. VII, 1987 Admin Code]

- (2) Contempt Power

General Rule: Get the aid of RTC.

Exception: Law gives agency contempt power. [Sec. 13, Bk. VII, 1987 Admin Code]

- (3) Power to issue Search Warrant or Warrant of Arrest

General Rule: Only Judges may issue.

Under the express terms of our Constitution, it is doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. [*Qua Chee Gan v. Deportation Board* (1963)], decided under the 1935 Constitution. Note that the 1987 and 1935 Constitutions are the same in limiting the issuance of warrants of arrest to a judge.]

- (1) Under Article III, Section 2, of the 1987 Constitution, only judges, and no other, who may issue warrants of arrest and search;
- (2) The **exception** is in cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner of Immigration may order arrested, following a final order of deportation, for the purpose of deportation [*Salazar v. Achacoso*, (1990)]

Board of Commissioners v. De La Rosa (1991) reiterates the rule that for a warrant of arrest issued by the Commissioner of Immigration to be valid, it must be for the sole purpose of executing a final order of deportation.

A warrant of arrest issued by the Commissioner of Immigration for purposes of investigation only is null and void for being unconstitutional

B.4. ADMINISTRATIVE DUE PROCESS

i. Due Process

While [Admin. Agencies are] free from the rigidity of certain procedural requirements, they cannot entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character [*Ang Tibay v. CIR* (1940)]

A decision rendered without due process is void *ab initio* and may be attacked at any time directly or collaterally by means of a separate action or proceeding where it is invoked. [*Garcia v. Molina* (2010)]

In administrative proceedings, the essence of due process lies simply in the opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. What is proscribed is the absolute lack of notice or hearing. [*Office of the Ombudsman v. Coronel* (2006)]

ii. Cardinal Primary Rights

Ang Tibay v. CIR (1940) lays down the cardinal primary rights:

- (1) Right to a hearing (Includes the right of a party to present his own case and submit evidence in support thereof)
- (2) The tribunal must consider the evidence presented
- (3) Decision must be supported by evidence.
- (4) Evidence must be substantial.

Quantum of Proof: **Substantial Evidence**

The amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion [Sec. 5, Rule 133, Rules of Court]

- (5) Decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected
- (6) Independent consideration of judge (Must not simply accept the views of a subordinate)
- (7) Decision rendered in such a manner as to let the parties know the various issues involved and the reasons for the decision rendered.

Due process does not require that actual taking of testimony be before the same officer who will decide the case. As long as a party is not deprived of his right to present his own case and submit evidence in support thereof, and the decision is supported by the evidence in the record, there is no question that the requirements of due process and fair trial are fully met [*American Tobacco Co. v. Director of Patents*(1975)]

The actual exercise of the disciplining authority's prerogative requires a prior independent consideration of the law and the facts. Failure to comply with this requirement results in an invalid decision. The disciplining authority should not merely and solely rely on an investigator's recommendation, but must personally weigh and assess the evidence gathered [*DOH v. Camposano* (2005)]

One may be heard, not solely by verbal presentation but also, and perhaps even many times more creditably than oral argument, through pleadings [*Mutuc v. CA* (1990)]

The right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service [*Lumiqued v. Exevea* (1997)]

Presence of a party at a trial is not always the essence of due process. All that the law requires to satisfy adherence to this constitutional precept is that the parties be given notice of the trial, an opportunity to be heard. Where the defendant failed to appear on the date set for the trial, of which he was previously notified, he is deemed to have forfeited his right to be heard in his defense [*Asprec v. Itchon* (1966)]

All that the law requires is the *element of fairness*; that the parties be given notice of trial and

- (1) An opportunity to be heard
- (2) In administrative proceedings, an opportunity to seek reconsideration
- (3) An opportunity to explain one's side

Any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard [*Vivo v. PAGCOR* (2013)]

The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party conforms to the constitutional

guarantee of due process of law [*Aguilar v. O'Pallick* (2013)]

The law, in prescribing a process of appeal to a higher level, contemplates that the reviewing officer is a person different from the one who issued the appealed decision. Otherwise, the review becomes a farce; it is rendered meaningless [*Rivera v. CSC* (1995)]

Is a trial necessary?—NO. Holding of an adversarial trial is discretionary. Parties cannot demand it as a matter of right. [*Vinta Maritime Co., Inc. v. NLRC* (1978)].

BUT the *right of a party to confront and cross-examine opposing witness is a fundamental right which is part of due process*. If without his fault, this right is violated, he is entitled to have the direct examination stricken off the record. [*Bachrach Motor Co., Inc. v. CIR* (1978)]

While the right to cross-examine is a vital element of procedural due process, the right does not necessarily require an actual cross examination but merely an opportunity to exercise this right if desired by the party entitled to it. [*Gannapao v. CSC* (2011)]

However, disciplinary cases involving students need not necessarily include the right to cross examination [*UP Board of Regents v. CA* (1999), citing *Ateneo de Manila University v. Capulong* (1993)]

Evidence on record must be fully disclosed to the parties. [*American Inter-Fashion v. Office of the President* (1991)] but respondents in administrative cases are not entitled to be informed of findings of investigative committees but only of the decision of the administrative body. [*Pefianco v. Moral* (2000)]

It is a basic tenet of due process that the decision of a government agency must state the facts and the law on which the decision is based, and not merely conclusions of law [*Albert v. Gangan* (2001)]

Section 14, Article VIII of the 1987 Constitution (*no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based*) need not apply to decisions rendered in administrative proceedings. Said section applies only to decisions rendered in judicial proceedings;

There is no requirement in *Ang Tibay v. CIR* that the decision must express clearly and distinctly the facts and the law on which it is based for as long as the administrative decision is grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied [*Solid Homes, Inc. v. Laserna* (2008)]

Note: However, in the Admin. Code, it is provided that:

Admin. Code, Bk. VII, Sec. 14. Section 14. Decision. - Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. The agency shall decide each case within thirty (30) days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.

iii. Due process is violated when:

- (1) There is failure to sufficiently explain the reason for the decision rendered; or
- (2) If not supported by substantial evidence;
- (3) And imputation of a violation and imposition of a fine despite absence of due notice and hearing. [*Globe Telecom v. NTC* (2004)]

iv. Self-incrimination

- (1) The right against self-incrimination may be invoked by the respondent at the time he is called by the complainant as a witness.
- (2) If he voluntarily takes the witness stand, he can be cross examined; but he may still invoke the right when the question calls for an answer which incriminates him for an offense other than that charged [*People v. Ayson* (1989)]

v. Notice and Hearing

When required:

- (1) When the law specifically requires it.
- (2) When it affects a person's status and liberty

When not required:

- (1) Urgent reasons
- (2) Discretion is exercised by an officer vested with it upon an undisputed fact [*Suntay v. People (1957)*]
- (3) If it involves the exercise of discretion and there is no grave abuse.
- (4) When it involves rules to govern future conduct of persons or enterprises, unless law provides otherwise.
- (5) In the valid exercise of police power.

It is a constitutional commonplace that the ordinary requirements of procedural due process yield to the necessities of protecting vital public interests, through the exercise of police power. [*Pollution Adjudication Board v. CA (1991)*]

Administrative decisions or interpretation not part of the legal system: A memorandum circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. [*Philippine Bank of Communications v. CIR (1999)*]

vi. Notice and Hearing under the Admin. Code:

Required in the following instances:

- (1) Contested cases [*Admin. Code, Bk. VII, Sec. 3*]
- (2) Insofar as practicable, to certain licensing procedures, involving grant, renewal, denial or cancellation of a license; i.e. when the grant, renewal, denial or cancellation of a license is *required* to be preceded by notice and hearing [*Sec. 17(1)*]
- (3) All licensing procedures, when a license is withdrawn, suspended, revoked or annulled [*Sec. 17(2)*]

Exception (to #3 only): Notice and hearing not required in cases of (a) willful violation of pertinent laws, rules and regulations or (b) when public security, health, or safety require otherwise. [*Sec. 17(2)*]

vii. Administrative Appeal and Review

Different kinds of administrative appeal and review: [*De Leon*]

- (1) That which inheres in the relation of administrative superior to administrative subordinate where determinations are made at lower levels of the same administrative system;
- (2) That embraced in statutes which provide for a determination to be made by a particular officer or body subject to appeal, review, or redetermination by another officer or body in the same agency or in the same administrative system;
- (3) That in which the statute attempts to make a court a part of the administrative scheme by providing in terms or effect that the court, on review of the action of an administrative agency, shall exercise powers of such extent that they differ from ordinary judicial functions and involve a trial de novo of matters of fact or discretion and application of the independent judgment of the court;
- (4) That in which the statute provides that an order made by a division of a Commission or Board has the same force and effect as if made by the Commission subject to a rehearing by the full Commission, for the 'rehearing' is practically an appeal to another administrative tribunal;
- (5) That in which the statute provides for an appeal to an officer on an intermediate level with subsequent appeal to the head of the department or agency; and
- (6) That embraced in statutes which provide for appeal at the highest level, namely, the President.

A party must prove that it has been affected or aggrieved by an administrative agency in order to entitle it to a review by an appellate

administrative body or another administrative body

The appellate administrative agency may conduct additional hearings in the appealed case, if deemed necessary [*Reyes v. Zamora*, (1979)].

N.B. Under the *Doctrine of Qualified Political Agency* [see *Villena v. Secretary of Interior* (1939)], a decision of the department head generally need not be appealed to the Office of the President, since the department head (e.g. Secretary) is the alter ego of the President, and the former's acts are presumably the President's. However, the doctrine does *not* apply when (a) the act is *repudiated by the President*, or (b) the act is required (by law) to be performed specifically by the department head.

viii. Administrative *Res Judicata*

When it applies

The doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings and not to the exercise of purely administrative functions. Administrative proceedings are non-litigious and summary in nature; hence, *res judicata* does not apply. [*Nasipit Lumber Co. v. NLRC* (1989)]

Requisites:

- (1) The former judgment must be final;
- (2) It must have been rendered by a court having jurisdiction over the subject matter and the parties;
- (3) It must be a judgment on the merits; and
- (4) There must be identity of parties, subject matter and cause of action [*Ipekdiyan Merchandising v. CTA* (1963)]

While it is true that this Court has declared that the doctrine of *res judicata* applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers, we have also limited the latter to proceedings purely administrative in nature. Therefore, when the administrative proceedings take on an adversary character, the doctrine of *res judicata* certainly applies. [*Heirs of Maximino Derla v. Heirs of Catalina Derla Vda. De Hipolito*, (Apr. 13, 2011)]

Effect

Decisions and orders of administrative bodies rendered pursuant to their quasi-judicial authority have, upon their finality, the force and effect of a final judgment within the purview of the doctrine of *res judicata*, which forbids the reopening of matters once judicially determined by competent authorities.

General Rule: *Res judicata* does not apply in administrative adjudication relative to citizenship

Exception: for *res judicata* to be applied in cases of citizenship, the following must be present:

- (1) A person's citizenship must be raised as a material issue in a controversy where said person is a party;
- (2) The Solicitor General or his authorized representative took active part in the resolution thereof;
- (3) the finding on citizenship is affirmed by SC [*Board of Commissioners v. De la Rosa* (1991)]

Res judicata may not be invoked in labor relations proceedings because they are non-litigious and summary in nature. [*Nasipit Lumber Co., Inc. v. NLRC* (1989)]

Due to the difference between the quantum of evidence, procedure, and sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other. [*Ocampo v. Office of the Ombudsman* (2000)]

The basis of administrative liability differs from criminal liability. The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. [*Ferrer v. Sandiganbayan* (2008)]

Forum Shopping

There is forum-shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigation commenced in the courts while an administrative proceeding is pending, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling.

The test for determining whether a party has violated the rule against forum shopping is where a final judgment in one case will amount to *res judicata* in the action under consideration. [*Fortich v. Corona* (1998), citing *First Philippine International Bank v. CA* (1996)]

The rule against forum shopping applies only to judicial cases or proceedings, not to administrative cases. [*Office of the Ombudsman v. Rodriguez* (2010)]

Note: Rodriguez involved two administrative cases against a *punong barangay* (one filed before the Ombudsman and the other filed before the Sangguniang Bayan).

C. FACT-FINDING, INVESTIGATIVE, LICENSING AND RATE-FIXING POWERS

C.1. ASCERTAINMENT OF FACT

A statute may give to non-judicial officers:

- (1) The power to declare the existence of facts which call into operation the statute's provisions, and
- (2) May grant to commissioners and other subordinate officers the power to ascertain and determine appropriate facts as a basis for procedure in the enforcement of particular laws.

Such functions are merely incidental to the exercise of power granted by law to clear navigable streams of unauthorized obstructions. They can be conferred upon executive officials provided the party affected

is given the opportunity to be heard. [*Lovina v. Moreno* (1963)]

C.2. INVESTIGATIVE POWERS

Administrative agencies' power to conduct investigations and hearings, and make findings and recommendations thereon is *inherent* in their functions as administrative agencies.

Findings of facts by administrative bodies which observed procedural safeguards (e.g. notice to and hearing of parties, and a full consideration of evidence [i.e. supported by substantial evidence]) are accorded the greatest respect by courts.

The legal meaning of "investigate" is essentially the same: "(t)o follow up step by step by patient inquiry or observation, To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry;" "to inquire; to make an investigation," "investigation" being in turn described as "(a)n administrative function, the exercise of which ordinarily does not require a hearing; x x an inquiry, judicial or otherwise, for the discovery and collection of facts concerning a certain matter or matters [*Cariño v. CHR* (1991)]

C.3. LICENSING FUNCTION

Sec. 17, Bk VII, Admin. Code. Licensing Procedure. – (1) When the grant, renewal, denial or cancellation of a license is required to be preceded by notice and hearing, the provisions concerning contested cases shall apply insofar as practicable.

(2) Except in cases of willful violation of pertinent laws, rules and regulations or when public security, health, or safety requires otherwise, no license may be withdrawn, suspended, revoked or annulled without notice and hearing

Sec. 18, Bk VII, Admin. Code. Non-expiration of License. – Where the licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature, the existing license shall not expire until the application shall have been finally determined by the agency.

Admin. Code, Bk. VII, Sec. 2(10). “License” includes the whole or any part of any agency permit, certificate, passport, clearance, approval, registration, charter, membership, statutory exemption or other form of permission, or regulation of the exercise of a right or privilege.

Admin. Code, Bk. VII, Sec. 2(11). “Licensing” includes agency process involving the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification or conditioning of a license.

When are notice and hearing required in licensing? *Only if it is a contested case.* Otherwise, it can be dispensed with (e.g. driver’s licenses).

A license or permit is not a contract between the sovereignty and the licensee. Rather, it is a special privilege, a permission or authority to do what is within its terms. It is always revocable. [*Gonzalo Sy Trading v. Central Bank* (1976)]

Note, however, that the Admin. Code prescribes notice and hearing before it can be revoked, subject to certain exceptions.

C.4. FIXING OF RATES, WAGES, PRICES

Admin. Code, Book. VII, Sec. 2(3). “Rate” means any charge to the public for a service open to all and upon the same terms, including individual or joint rates, tolls, classification or schedules thereof, as well as communication, mileage, kilometrage and other special rates which shall be imposed by law or regulation to be observed and followed by any person.

i. Publication requirement for rate-fixing

Admin. Code, Book. VII, Sec. 9. Public Participation. – [...] (2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least 2 weeks *before* the first hearing thereon.

Generally, the power to fix rates is a *quasi-legislative function*, i.e. it is meant to apply to all. However, it becomes *quasi-judicial* when the rate is applicable only to a particular party, predicated upon a finding of fact. [See *Vigan Electric Light Co. v. Public Service Commission* (1964), cited in *PHILCOMSAT v. Alcuaz* (1989)]

N.B. The old doctrine is if the rate-fixing power is quasi-legislative, it need not be accompanied by prior notice and hearing. Under the Admin. Code (*supra*), the distinction seems to have been disregarded, since the provision did not qualify the character of the rate-fixing, and now requires prior notice (via publication) before the hearing.

Can the power to fix rates be delegated to a common carrier or other public service? NO. The latter may propose new rates, but these will not be effective without the approval of the administrative agency. [*KMU v. Garcia* (1994)]

What are considered in the fixing of rates?

- (1) The present valuation of all the property of a public utility, and
- (2) The fixed assets.

The property is deemed taken and condemned by the public at the time of filing the petition, and the rate should go up and down with the physical valuation of the property. [*Ynchausti v. Public Utility Commissioner* (1922)]

The charter of Manila International Airport Authority (MIAA), as amended, directly vests the power to determine revisions of fees, charges and rates in the “ministry head” and even requires approval of the cabinet; The

ministry head who has the power to determine the revision of fees, charges and rates of the MIAA is now the DOTC Secretary; As an attached agency of the DOTC, the MIAA is governed by the Administrative Code of 1987 which requires notice and public hearing in the fixing of rates [*MIAA vs Airspan Corp.* (2004)]

IV. Judicial Recourse and Review

General Rule: Judicial review may be granted or withheld as Congress chooses, except when the Constitution requires or allows it. Thus, a law may provide that the decision of an administrative agency shall be final and not reviewable and it would still not offend due process.

However, Sec. 1, par. 2, Art. VIII of the Constitution, which provides that judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government, clearly means that judicial review of administrative decisions cannot be denied the courts when there is an allegation of grave abuse of discretion. [NACHURA]

It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute. xxx Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion. [*San Miguel Corp. v. NLRC* (1975)]

Rationale:

- (1) There is an underlying power of the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute;
- (2) The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect the substantial rights of the parties;
- (3) It is that part of the checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications.[*St. Martin's Funeral Homes v. NLRC* (1998)]

N.B. Rule 43 of the Rules of Court provides that the Court of Appeals shall have appellate jurisdiction over awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions.

The Bangko Sentral ng Pilipinas (BSP) Monetary Board is a quasi-judicial agency exercising quasi-judicial powers or functions. The Court of Appeals has appellate jurisdiction over final judgments, orders, resolutions or awards of the BSP Monetary Board on administrative complaints against banks and quasi-banks.

Nothing in R.A. 7653 or in R.A. 8791 explicitly allows an appeal of the decisions of the BSP Monetary Board to the Court of Appeals. However, this shall not mean that said decisions are beyond judicial review. [*United Coconut Planters Bank v. E. Ganzon, Inc.*, (2009)]

Extent of Judicial Review

(1) Questions of Law - such as

- (a) Constitutionality of the law creating the agency and granting it powers
- (b) Validity of agency action if these transcend limits established by law
- (c) Correctness of interpretation or application of the law

(2) Questions of Fact

Admin. Code, Bk. VII, Sec. 25 (5). Judicial Review. - Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law.

General Rule: Findings of fact by the agency are final when supported by substantial evidence.

Exceptions:

1. Specifically allowed otherwise by law

2. Fraud, imposition, or mistake other error of judgment in evaluating the evidence [*Ortua v. Singson Encarnacion* (1934)]
3. Error in appreciation of pleadings and interpretation of the documentary evidence presented by the parties [*Tan Tiong Teck v. SEC* (1940)]
4. Decision of the agency was rendered by an almost divided agency and that the division was precisely on the facts as borne out by the evidence [*Gonzales v. Victory Labor Union* (1969)]

(3) Questions of Discretion - when a matter has been committed to agency discretion, courts are reluctant to disturb agency action on it. But a party may get a court to intervene against arbitrary action and grave abuse of discretion [*Cortes*]

A. DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION

General Rule: Courts will not intervene if the question to be resolved is one which requires the expertise of administrative agencies and the legislative intent on the matter is to have uniformity in the rulings. [*Panama Refining Co. v. Ryan* (1935, US Supreme Court decision)]

It can only occur where there is a concurrence of jurisdiction between the court and the administrative agency.

It is a question of the court yielding to the agency because of the latter's expertise, and does not amount to ouster of the court. [*Texas & Pacific Railway v. Abilene* (1907, US Supreme Court decision)]

It is the recent jurisprudential trend to apply the doctrine of primary jurisdiction in many cases that demand the special competence of administrative agencies. It may occur that the *Court has jurisdiction to take cognizance of a particular case*, which means that the matter involved is also judicial in character. However, if the determination of the case *requires the expertise, specialized skills and knowledge of*

the proper administrative bodies because technical matters or intricate questions of facts are involved, then *relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court* [*Industrial Enterprises, Inc. v. CA* (1990)]

Well-entrenched is the rule that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. *Administrative agencies are given a wide latitude in the evaluation of evidence and in the exercise of their adjudicative functions, latitude which includes the authority to take judicial notice of facts within their special competence* [(*Quiambao v. CA* (2005))]

The *doctrine of primary jurisdiction* applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case, the judicial process is *suspended* pending referral of such issues to the administrative body for its view. [*Industrial Enterprises, Inc. v. CA, supra*]

The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. [*Vidad v. RTC* (1993)]

Rationale: In this era of clogged docket courts, the need for specialized administrative boards with the special knowledge and capability to hear and determine promptly disputes on technical matters has become well-nigh indispensable. Between the power lodged in an administrative body and a court, the unmistakable trend has been to refer it to the former. [*GMA v. ABS CBN* (2005)]

Requisites:

- (1) An administrative body and a regular court have concurrent and original jurisdiction
- (2) Question to be resolved requires expertise of administrative agency
- (3) Legislative intent on the matter is to have uniformity in rulings
- (4) Administrative agency is performing a quasi-judicial or adjudicatory function (not rule-making or quasi-legislative function) [*Smart v. NTC* (2003)]

A.1. WHEN THE DOCTRINE IS INAPPLICABLE:

- (1) If the agency has *exclusive (original) jurisdiction* (i.e. Doctrine of Exhaustion would apply);
- (2) When the issue is *not within the competence* of the administrative body to act on (e.g. pure questions of law, over which the expertise is with the courts);
 - Regular courts have jurisdiction in cases where what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function [*Smart v. NTC* (2003)]
- (3) When the issue involved is *clearly a factual question that does not require specialized skills and knowledge for resolution* to justify the exercise of primary jurisdiction.

A.2. EFFECT

While no prejudicial question strictly arises where one is a civil case and the other is an administrative proceeding, in the interest of good order, it behooves the court to suspend its action on the cases before it pending the final outcome of the administrative proceedings [*Vidad v. RTC* (1993)]

Does not *per se* have the effect of restraining or preventing the courts from the exercise of their lawfully conferred jurisdiction. A contrary rule would unduly expand the

doctrine of primary jurisdiction [*Conrad and Co., Inc. v. CA (1995)*]

All the proceedings of the court in violation of the doctrine and all orders and decisions rendered thereby are null and void [*Province of Aklan v. Jody King Construction and Development Corp. (2013)*]

Note: The court may raise the issue of primary jurisdiction *sua sponte* and its invocation cannot be waived by the failure of the parties to argue it as the doctrine exists for the proper distribution of power between judicial and administrative bodies and not for the convenience of the parties [*Euro-Med Laboratories Phil., Inc. v. Province of Batangas (2006)*]

B. DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES

General Rule: Where the law has delineated the procedure by which administrative appeal or remedy could be effected, the same should be followed before recourse to judicial action can be initiated. [*Pascual v. Provincial Board (1959)*]

Requisites:

- (1) The administrative agency is performing a quasi-judicial function;
- (2) Judicial review is available; *and*
- (3) The court acts in its appellate jurisdiction.

Rationale:

- (1) *Legal reason:* The law prescribes a procedure.
- (2) *Practical reason:* To give the agency a chance to correct its own errors and prevent unnecessary and premature resort to the courts
- (3) *Reasons of comity:* Expedience, courtesy, convenience.

B.1. EXCEPTIONS TO THE DOCTRINE OF EXHAUSTION OF REMEDIES:

- (1) Purely legal questions. [*Castro v. Secretary (2001)*]
- (2) There is grave doubt as to the availability of the administrative remedy [*Pascual v. Provincial Board (1959)*]
- (3) Steps to be taken are merely matters of form. [*Pascual v. Provincial Board (1959)*]
- (4) Administrative remedy not exclusive but merely cumulative or concurrent to a judicial remedy. [*Pascual v. Provincial Board (1959)*]
- (5) There are circumstances indicating urgency of judicial intervention [*DAR v. Apex Investment (2003)*]
- (6) Rule does not provide plain, speedy, adequate remedy [*Information Technology Foundation v. COMELEC (2004)*]
- (7) Resort to exhaustion will only be oppressive and patently unreasonable. [*Cipriano v. Marcelino (1972)*]
- (8) Where the administrative remedy is only permissive or voluntary and not a prerequisite to the institution of judicial proceedings. [*Corpus v. Cuaderno, Sr. (1962)*]
- (9) Application of the doctrine will only cause great and irreparable damage which cannot be prevented except by taking the appropriate court action. [*De Lara, Jr. v. Cloribel (1965)*]
- (10) When it involves the rule-making or quasi-legislative functions of an administrative agency [*Smart v. NTC (2003)*]
- (11) Administrative agency is in estoppel. [*Republic v. Sandiganbayan (1996)*]
- (12) Doctrine of qualified political agency (respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter) [*Demaisip v. CA (1959)*; *Pagara v. CA (1996)*]

- (13) Subject of controversy is private land in land case proceedings. [*Soto v. Jareno* (1986)]
- (14) Violation of due process. [*Pagara v. CA* (1996)]
- (15) Where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant [*Republic v. Sandiganbayan* (1996)]
- (16) Administrative action is patently illegal amounting to lack or excess of jurisdiction. [*DAR v. Apex Investment* (2003)]
- (17) Resort to administrative remedy will amount to a nullification of a claim [*Paat v. CA* (1997); *Alzate v. Aldana*, (1960)]
- (18) No administrative review provided for by law [*Estrada v. CA* (2004)]
- (19) Issue of non-exhaustion of administrative remedies rendered moot [see enumeration in *Estrada v. CA* (2004)]
- (20) When the claim involved is small
- (21) When strong public interest is involved
- (22) In quo warranto proceedings [see enumeration in *Lopez v. City of Manila* (1996)]
- (23) Law expressly provides for a different review procedure. [*Samahang Magbubukid v. CA* (1999)]

Note: The exceptions may be condensed into three:

- (1) Grave abuse of discretion;
- (2) Pure question of law; or
- (3) No other plain, speedy, and adequate remedy.

However, the long list has been developed by jurisprudence. It is prudent to cite it over the shortened list.

B.2. EFFECT OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES:

A direct action in court without prior exhaustion of administrative remedies, when

required, is premature, warranting its dismissal on a motion to dismiss grounded on lack of cause of action.

Failure to observe the doctrine of exhaustion of administrative remedies does not affect the Court's jurisdiction.

If not invoked at the proper time, this ground is deemed waived and the court can take cognizance of the case and try it [*Republic v. Sandiganbayan* (1996)]

	Doctrine of Exhaustion of Administrative Remedies	Doctrine of Primary Administrative Jurisdiction
Jurisdiction of Court	Appellate	Concurrent Original Jurisdiction with Admin Body
Ground for Non-exercise of Jurisdiction	Exhaustion of administrative remedy a condition precedent.	The court yields to the jurisdiction of the administrative agency because of its specialized knowledge or expertise.
Court Action	Dismiss	Suspend Judicial Action

C. DOCTRINE OF FINALITY OF ADMINISTRATIVE ACTION

Courts will not interfere with the act of an administrative agency before it has reached finality or it has been completed.

Rationale: Without a final order or decision, the power has not been fully and finally exercised.

Prohibition is not the proper remedy [when] the enabling law itself, which is B.P. Blg. 325, has specifically tasked the Cabinet to review and approve any proposed revisions of rates of fees and charges. Petitioners should have *availed of this easy and accessible remedy instead of immediately resorting to the judicial process.* [*Paredes v. CA* (1996)]

POLITICAL LAW

ELECTION LAW

A. Suffrage

1. DEFINITIONS

Suffrage: The right to vote in the election of officers chosen by the people and in determination of questions submitted to the people.

Election: The means by which the people choose their officials for a definite and fixed period and to whom they entrust for the time being the exercise of the powers of government.

2. SOURCES OF ELECTION LAWS

Non-Exhaustive Listing; includes

- Constitution
- B.P. Blg. 881 (Omnibus Election Code)
- R.A. No. 6735 (1989) (Initiative and Referendum Act)
- R.A. No. 7160 (1991) (Local Government Code)
- R.A. No. 7166 (1991) (Electoral Reforms Act of 1991)
- R.A. No. 7941 (1995) (Party-List Act)
- R.A. No. 8189 (1996) (Registration of Voters Act)
- R.A. No. 9006 (2001) (Fair Elections Act)
- R.A. No. 9189 (2003) (Overseas Absentee Voting Act)
- R.A. No. 9225 (2003) (Repatriation Act)
- R.A. 8436, as amended by R.A. 9369 (Automated Election System)

3. KINDS OF ELECTIONS

- (1) **Regular:** One provided by law for the election of officers either nationwide or in certain subdivisions thereof, after the expiration of the full term of the former officers.
 - The SK election is not a regular election because the latter is participated in by youth with ages ranging from 15-21 (now 15-18 as per RA 9164), some of whom are not qualified voters to elect local or national elective officials [*Paras v. COMELEC* (1996)]
- (2) **Special:** One held to fill a vacancy in office before the expiration of the full term for which the incumbent was elected.
- (3) **Plebiscite:** The electoral process by which an initiative on the Constitution is approved or rejected by the people. [*Sec. 3(e), R.A. No. 6735*]
- (4) **Referendum:** The power of the electorate to approve or reject a legislation through an election called for the purpose. [*Sec. 3(c), R.A. No. 6735*]
 - (a) **Referendum on Statutes** or referring to laws passed by Congress;
 - (b) **Referendum on Local Law**, referring to laws, resolutions, or ordinances passed by regional assemblies and local legislative bodies. [*Id.*]
- (5) **Initiative:** The power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. [*Sec. 3(a), R.A. No. 6735*]
 - (a) **Initiative on the Constitution:** Petition proposing amendments to the Constitution.

- (b) **Initiative on Statutes:** Petition proposing to enact a national legislation.
- (c) **Initiative on local legislation:** Petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution or ordinance. [*Id.*]
 - The constitutional provision on people's initiative to amend the Constitution can only be implemented by law to be passed by Congress [see *Sec. 2, Art. XVII, Constitution*]. No such law has been passed. R.A. No. 6735 is incomplete, inadequate, or wanting in essential terms and conditions insofar as initiative on amendments to the Constitution is concerned. [*Santiago v. COMELEC (1997)*]
 - Note: Section 2 of Art. XVII Constitution is limited to proposals to *amend*—not to *revise*—the Constitution. [see *Lambino v. COMELEC (2006)*]
- (6) **Recall:** the termination of official relationship of a local elective official for loss of confidence prior to the expiration of his term through the will of the electorate. [see *Sec. 69, LGC*]

4. ELECTION PERIOD

General Rule: The election period shall commence 90 days before the day of the election and shall end 30 days thereafter. [Art. IX-C, Sec. 9, Const.]

Exception: Special cases, when otherwise fixed by the COMELEC. [*Id.*]

B. Qualification and Disqualification of Voters

1. QUALIFICATIONS, IN GENERAL

[Art. V, Sec. 1, 1987 Const.]

Section 1. Suffrage may be exercised by all citizens of the Philippines, not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote, for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage. [Sec. 1, Art. V, Const.]

- (1) **Citizenship:** Voters must be Filipino citizen by birth or naturalization.

It is incumbent upon one who claims Philippine citizenship to prove to the satisfaction of the court that he is really Filipino. Any doubt regarding citizenship must be resolved in favor of the State. [*Go v. Ramos (2009)*]

- (2) **Age:** At least 18 at the time of the election.

- (3) **Residency:** The voter must be a resident of (1) the Philippines for at least 1 year, and (2) the place wherein they propose to vote for at least 6 months immediately preceding the election.

N.B. Any person who temporarily resides in another city, municipality or country solely by any of the following reasons shall not be deemed to have lost his original residence:

- (a) Employment in private or public service;

- (b) Educational activities;
- (c) Work in the military or naval reservations within the Philippines;
- (d) Service in the AFP, PNP; or
- (e) Confinement or detention in government institutions [Sec. 9, R.A. No. 8189]

It is not necessary that a person should have a house in order to establish his residence or domicile in a municipality. It is enough that he should live there, provided that his stay is accompanied by his intention to reside therein permanently. [*Marcos v. COMELEC* (1995)]

In election cases, the Court treats domicile and residence as synonymous terms. Both import not only an intention to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of such intention. [*Pundaodaya v. COMELEC* (2009)]

There is nothing wrong in an individual changing residences so he could run for an elective post, for as long as he is able to prove that he has effected a change of residence for the period required by law. [*Aquino v. COMELEC* (1995)]

(4) Not otherwise disqualified by law:
infra

N.B. No literacy, property or other substantive requirement shall be imposed on the exercise of suffrage. [Art. V, Sec. 1, Const.]

Hence, Congress may impose limitations on the statutory right of suffrage. This provision is merely "geared towards the elimination of irrelevant standards that are purely based on socio-economic considerations that have no bearing on the right of a citizen to intelligently cast his vote and to further the public good."

[*Kabataan Partylist v. COMELEC, G.R. No. 221318* (2015)]

2. DISQUALIFICATIONS, IN GENERAL

The following shall be disqualified from registering:

- (a) Sentenced by final judgment to suffer imprisonment for not less than 1 year (unless granted a plenary pardon or an amnesty) shall automatically reacquire right to vote upon the expiration of 5 years after the service of sentence;
- (b) Adjudged by final judgment for having committed any crime involving disloyalty to the duly constituted government (e.g. rebellion, sedition, violation of the firearms law) or any crime against national security (unless restored to full civil and political rights in accordance with law) shall automatically reacquire the right to vote upon the expiration of 5 years after the service of sentence; or
- (c) Insane or incompetent persons as declared by competent authority. [Sec. 11, R.A. 8189, Voter's Registration Act of 1996]

3. SPECIAL RULES FOR OVERSEAS ABSENTEE VOTERS

a. Qualifications

- (1) Filipino citizen;
- (2) Abroad on the day of the election;
- (3) At least 18 years of age on the day of the election; and
- (4) Not otherwise disqualified by law. [Sec. 3(f)-4, R.A. 9189]

b. Disqualifications

The following are disqualified from voting under the Overseas Absentee Voting law:

- (a) Lost their Filipino citizenship in accordance with Philippine laws;

- (b) Expressly renounced their Philippine citizenship and who have pledged allegiance to a foreign country;
- (c) Committed and convicted in a final judgment by a court or tribunal of an offense punishable by imprisonment of not less than 1 year, including those who have committed and been found guilty of Disloyalty as defined under Article 137 of the RPC;
- (d) Immigrant or a permanent resident who is recognized as such in the host country

Exception: He/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that:

- (1) He/she shall resume actual physical permanent residence in the Philippines not later than 3 years from approval of his/her registration; and
- (2) He/she has not applied for citizenship in another country

Effect of failure to return: Cause for the removal of his/her name from the National Registry of Absentee Voters and his/her permanent disqualification to vote in absentia (i.e. through overseas absentee voting).

- (e) Citizen previously declared insane or incompetent by competent authority in the Philippines or abroad, as verified by the Philippine embassies, consulates or Foreign Service establishments concerned. [Sec. 5, R.A. 9189]

C. Registration of Voters

1. DEFINITION AND NATURE

Registration [of voters]: The act of accomplishing and filing of a sworn application for registration by a qualified voter before the election officer of the city or municipality wherein he resides and including the same in the book of registered voters upon approval by the Election Registration Board. [Sec. 3a, R.A. 8189]

Registered voter – in order that a qualified elector may vote in any election, plebiscite or referendum, he must be registered in the Permanent List of Voters for the city or municipality in which he resides. [Sec. 115, B.P. 881]

Rationale for registration requirements, qualifications, and disqualifications: The right to vote is not a natural right but is a right created by law. Suffrage is a privilege granted by the State to such persons or classes as are most likely to exercise it for the public good. [*People v. Corral (1936)*]

Condition Precedent: Registration does not confer the right to vote but it is a condition precedent to the exercise of the right [*Yra v. Abano (1928)*]

Biometrics validation requirement is not an unconstitutional substantive requirement: Even if failure to comply with the biometrics validation requirement will result in the deactivation of the voter's registration [under R.A. No. 10367 or the Biometrics Law of 2013], it is not unconstitutional. The requirement is a "mere aspect of the registration procedure, of which the State has the right to reasonably regulate." [*Kabataan Partylist v. COMELEC (2015)*]

"Proceeding from the significance of registration as a necessary requisite to the right to vote, the State undoubtedly, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the

ultimate purpose of conducting honest, orderly and peaceful election[.]” [Akbayan-Youth v. COMELEC (2001)]

2. SYSTEM OF CONTINUING REGISTRATION OF VOTERS

a. Period of registration

Generally, daily: The personal filing of application of registration of voters shall be conducted daily in the office of the Election Officer during regular office hours.

Exception [i.e. when registration is prohibited]: No registration shall be conducted within

- (1) 120 days before a regular election
- (2) 90 days before a special election [Sec. 8, R.A. 8189]

COMELEC Resolution 8585, which set the deadline for voter registration to Oct. 31, 2009 (election was May 10, 2010, or more than 120 days), was declared null and void because Sec. 8 of RA 8189 has determined that the period of 120 days before a regular election and 90 days before a special election is enough time for the COMELEC to make all the necessary preparations with respect to the coming elections. COMELEC is granted the power to fix other periods and dates for pre-election activities only if the same cannot be reasonably held within the period provided by law. There is no ground to hold that the mandate of continuing voter registration cannot be reasonably held within the period provided by Sec. 8 of R.A. 8189. [Palatino v. COMELEC (2009)]

b. Manner of Registration for Illiterate or Disabled Voters

For illiterate persons: May register with the assistance of the Election Officer or any member of an accredited citizen’s arms.

For physically disabled persons: Application for registration may be prepared by:

- (a) Any relative within the 4th civil degree of consanguinity or affinity;
- (b) By the Election Officer; or
- (c) Any member of an accredited citizen’s arm [Sec. 14, R.A. 8189]

N.B. Definition of disabled voter under the AES: A person with impaired capacity to use the Automated Election System (“AES”). [Sec. 2(11), RA 9369]

c. Election Registration Boards

There shall be in each city and municipality as many Election Registration Boards (“ERB”) as there are election officers therein [Sec. 15, RA 8189]

Composition: The ERB shall be composed of three members:

- (1) Chairman: Election Officer. If disqualified, COMELEC shall designate an acting Election Officer.
- (2) Members:
 - (a) Public school official most senior in rank; and
 - (b) Local civil registrar, or in his absence, the city or municipal treasurer. If neither are available, any other appointive civil service official from the same locality as designated by the COMELEC.

Disqualifications: Relation to each other or to any incumbent city or municipal elective official within the 4th civil degree of consanguinity or affinity. [Sec. 15, R.A. 8189]

d. Change Of Residence Or Address

Change of residence to another city or municipality: The registered voter may apply with the Election Officer of his new

residence for the transfer of his registration records. [Sec. 12, R.A. 8189]

Change of address in the same municipality or city: Voter shall immediately notify the Election Officer in writing. [Sec. 13, R.A. 8189]

e. Challenges to Right to Register [Sec. 18, R.A. No. 8189]

<i>By</i>	Any (1) voter; (2) candidate; or (3) representative of a registered political party
<i>Form</i>	(1) In writing, stating the ground therefor (2) Under oath; and (3) Attached to the application, together with proof of notice of hearing to the challenger and the applicant
<i>When filed</i>	Must be filed not later than the 2 nd Monday of the month in which the same is scheduled to be heard or processed by the ERB. Should 2 nd Monday fall on a non-working holiday, filing may be made on the next following working day [Sec. 18, R.A. 8189]
<i>Hearing</i>	3 rd Monday of the month
<i>Decision</i>	Before the end of the month

3. REMEDY IN CASE OF APPROVAL/DISAPPROVAL OF APPLICATION FOR REGISTRATION

Aggrieved party may file a **petition for exclusion or inclusion**, *infra*, as the case may be, with the MTC.

4. DEACTIVATION OF REGISTRATION

a. Definition

Deactivation: Process of deactivating the registration of certain persons, removing their registration records from the corresponding precinct book of voters and placing the same in the inactive file, properly marked “deactivated” and dated in indelible ink.

b. Causes of Deactivation

 [Sec. 27, R.A. 8189]

The board shall remove the registration records of the following persons from the corresponding precinct book of voters and place the same in the inactive file:

<i>Ground for Deactivation</i>	<i>Specific Mode of Reactivation</i>
Sentenced by final judgment to suffer imprisonment for not less than 1 year (unless granted a plenary pardon or an amnesty)	(1) Plenary pardon or an amnesty; or (2) Automatically, upon the expiration of 5 years after the service of sentence as certified by clerks of courts
Adjudged by final judgment for having committed any crime involving disloyalty to the duly constituted government (e.g. rebellion, sedition, violation of the firearms law) or any crime against national security (unless restored to full civil and political rights in accordance with law)	Automatically, upon expiration of 5 years after the service of sentence
Insane or incompetent persons as declared by competent	[See general ground for reactivation, <i>infra</i>]

Ground for Deactivation	Specific Mode of Reactivation
authority	
Did not vote in the 2 successive preceding regular elections [excluding: SK elections]	
Registration has been ordered excluded by the Court	
Loss of Filipino citizenship	

c. Reactivation of Registration

Ground: The grounds for the deactivation no longer exist.

Procedure: Any voter whose registration has been deactivated may file with the Election Officer a sworn application for reactivation of his registration in the form of an affidavit stating the ground, *supra*.

- Filing is any time not later than 120 days before a regular election and 90 days before a special election.
- The Election Officer shall submit said application to the ERB and if approved, the Election Officer shall retrieve the registration record from the inactive file and include the same in the corresponding precinct book of voters.
- Local heads or representatives of political parties shall be properly notified on approved applications. [Sec. 28, R.A. 8189]

5. CERTIFIED LIST OF VOTERS

a. Definitions

List of Voters: Refers to an enumeration of names of registered voters in a precinct duly certified by the Election Registration Board for use in the election.

Preparation: The ERB shall prepare and post a certified list of voters 90 days before a regular election and 60 days before a special election. [Sec. 30, R.A. 8189]

Posting: Copies of the certified list along with a certified list of deactivated voters categorized by precinct per barangay, within the same period shall be posted in the office of the Election Officer and in the bulletin board of each city/municipal hall. Upon payment of the fees as fixed by the Commission, the candidates and heads shall also be furnished copies thereof. [Sec.30, RA 8189]

b. Grounds when List of Voters will be Altered

- (1) Deactivation/Reactivation
- (2) Exclusion/Inclusion
- (3) Cancellation of Registration in case of death
- (4) New voters
- (5) Annulment of Book of Voters
- (6) Transfer of Residence

Transfer to another precinct: The precinct assignment of a voter in the permanent list of voters shall not be changed/alterd/transferred to another precinct without the express written consent of the voter. Provided, however, that the voter shall not unreasonably withhold such consent. Any violation thereof shall constitute an election offense. [Sec. 4, R.A. 8189]

c. Annulment of Book of Voters

The COMELEC shall, upon verified petition of any voter or election officer or duly registered political party, and after notice and hearing, annul any book of voters that is:

- (1) Not prepared in accordance with R.A. 8189 or the Voters' Registration Act of 1996
- (2) Prepared through fraud, bribery, forgery, impersonation, intimidation, force, or any similar irregularity; or
- (3) Contains data that are statistically improbable

No order, ruling or decision annulling a book of voters shall be executed within 90 days before an election. [Sec. 39, R.A. 8189]

6. SPECIAL RULES FOR OVERSEAS ABSENTEE VOTERS

Definitions:

Absentee Voting: Process by which qualified citizens of the Philippines abroad exercise their right to vote. [Sec. 3a, R.A. 9189, The Overseas Absentee Voting Act]

Overseas Absentee Voter: Citizen of the Philippines who is qualified to register and vote under this Act, not otherwise disqualified by law, who is abroad on the day of elections. [Sec. 3 (f), R.A. 9189]

Covered Elections: Elections for president, vice-president, senators and party-list representatives [Sec. 3f, R.A. 9189]

Personal registration, required: Registration as an overseas absentee voter shall be done in person. [Sec.5, R.A. 9189]

National Registry of Overseas Absentee Voters: The consolidated list prepared, approved and maintained by the COMELEC, of overseas absentee voters whose applications for registration as absentee voters, including those registered voters who have applied to be certified as absentee voters, have been approved by the

Election Registered Board. [Sec. 3 (e), R.A. 9189]

General Rule: The entries in the National Registry of Overseas Absentee Voters and the annotations as overseas absentee voters in the Certified Voters' List shall be permanent, and cannot be cancelled or amended.

Exceptions:

- (1) **[At the initiative of the voter]** When the overseas absentee voter files a letter under oath addressed to the Comelec that he/she wishes to be removed from the Registry of Overseas Absentee Voters, or that his/her name be transferred to the regular registry of voters.
- (2) **[At the initiative of the COMELEC]** When an overseas absentee voter's name was ordered removed by the Comelec from the Registry of Overseas Absentee Voters for his/her failure to exercise his/her right to vote under R.A. 9189 for 2 consecutive national elections. [Sec. 9, R.A. 9189]

D. Inclusion and Exclusion Proceedings

1. JURISDICTION IN INCLUSION AND EXCLUSION CASE

Original and Exclusive Jurisdiction: The Municipal and Metropolitan Trial Courts shall have original and exclusive jurisdiction over all cases of inclusion and exclusion of voters in their respective cities or municipalities. [Sec. 33, R.A. 8189]

The nature of the MTC's jurisdiction is limited. The jurisdiction of the MTC "over exclusion cases is limited only to determining the right of voter to remain in the list of voters or to declare that the challenged voter is not qualified to vote in the precinct in which he is registered, specifying the ground of the voters disqualification." Hence, the trial court has no power to order the change or transfer of registration from one place of residence to another for it is the function of the ERB as provided under Section 12 of R.A. No. 8189. [Domino v. COMELEC (1999)]

Appellate Jurisdiction: Decisions of the MTC or MeTC may be appealed by the aggrieved party to the RTC within 5 days from receipt of notice thereof. No motion for reconsideration shall be entertained. [Sec. 33, R.A. 8189]

Generally, no res judicata: A decision in an exclusion or inclusion proceeding, even if final and unappealable, does not acquire the nature of *res judicata*. [Domino v. COMELEC (1999)]

Exception: The decision is *res judicata* as to the right to remain in the list of voters or for being excluded therefrom for the particular election in relation to which the proceedings had been held. [Id.]

2. PROCESS

Petition for Inclusion	Petition for Exclusion
<i>When to file</i>	
Any time except 105 days before a regular election or 75 days before a special election	Any time except 100 days before a regular election or 65 days before a special election
<i>Who may file</i>	
(1) One whose application for registration has been disapproved by the BEI or (2) One whose name has been stricken out from the list	Any (1) registered voter; (2) representative of a political party; or (3) the Election Officer
<i>Period to decide</i>	
Within 15 days after its filing	Within 10 days from its filing

3. SPECIAL RULES ON OVERSEAS ABSENTEE VOTERS

Petition for Inclusion [Sec. 6.7, RA 9189]	Petition for Exclusion [Sec. 6.6, RA 9189]
<i>When to file</i>	
5 days after receipt of notice of disapproval	Any time not later than 210 days before the day of the elections
<i>Who may file</i>	
Applicant or his authorized representative	Any interested person
<i>Period to decide</i>	
5 days after its filing	15 days after its filing

E. Political Parties

1. LEGAL BASIS AND PURPOSE

A free and open party system shall be allowed to evolve according to the free choice of the people. [Sec. 6, Art. IX-C, Const.]

No votes cast in favor of a political party, organization, coalition shall be valid, except for those registered under the party-list system. [Sec. 7, Art. IX-C, Const.]

Purpose: To enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. [Sec. 2, R.A. 7941]

2. DEFINITIONS

A. POLITICAL PARTIES, IN GENERAL

Political party: "Political party" or "party", when used in this Act, means an organized group of persons pursuing the same ideology, political ideas or platforms of government and includes its branches and divisions. [B.P. 881, sec. 60]

B. UNDER THE PARTY-LIST SYSTEM

[Sec. 3, R.A. 7941, *Party-List System Act*]

Party: Either a political party or a sectoral party or a coalition of parties.

Party-list system: Mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions registered with the COMELEC.

Political party: An organized group of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates certain of its leaders and members as candidates for public office.

3 KINDS OF PARTIES:

- (1) **National party:** Constituency is spread over the geographical territory of at least a majority of the regions.
- (2) **Regional party:** Constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region.
- (3) **Sectoral party:** Organized group of citizens belonging to any of the following sectors: labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals whose principal advocacy pertains to the special interests and concerns of their sector.

Sectoral organization: Group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns.

Coalition: An aggrupation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.

4. JURISDICTION OF THE COMELEC OVER POLITICAL PARTIES

(1) REGISTRATION OF POLITICAL PARTIES:

(a) For political parties, in general, *see* Sec. 60, B.P. Blg. 881;

(b) For party-lists, *see* R.A. 7941, *Party-List System Act*, secs. 5-7, *infra*;

(2) RESOLUTION OF INTRA-PARTY DISPUTES:

"[T]he COMELEC's powers and functions under Section 2, Article IX-C of the Constitution, "include the ascertainment of the identity of the political party and its legitimate officers responsible for its acts." [T]he COMELEC's power to register political parties necessarily involved the determination of the persons who must act on its behalf. Thus, the COMELEC may resolve an intra-party leadership dispute, in a proper case brought before it, as an incident of its power to register political parties." [*Atienza v. COMELEC*, G.R. No. 188920, Feb. 16, 2010]

5. REGISTRATION

A. PURPOSES OF REGISTRATION

- (1) To acquire juridical personality;
- (2) To qualify for subsequent accreditation; and
- (3) To entitle it to rights and privileges granted to political parties. [Sec. 61, B.P. Blg. 881]
- (1) [(4) To participate in the party-list system. [Sec. 5, R.A. 7941]]

B. REGISTRATION UNDER THE PARTY-LIST SYSTEM

Any organized group of persons may register as a party, organization or coalition for purposes of the party-list system.

Sec. 5, R.A. 7941

File with the COMELEC not later than 90 days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require



COMELEC shall publish the petition in at least 2 national newspapers of general circulation



COMELEC shall, after due notice and hearing, resolve the petition within 15 days from the date it was submitted for decision but in no case not later than 60 days before election

C. GROUPS WHICH CANNOT BE REGISTERED AS POLITICAL PARTIES

- (1) Religious denominations and sects;
- (2) Those which seek to achieve their goals through violence or unlawful means;
- (3) Those which refuse to uphold and adhere to the Constitution; or
- (4) Those supported by foreign governments. [Art. IX-C, Sec. 2 (5), Constitution]

D. GROUNDS FOR REFUSAL/CANCELLATION OF REGISTRATION

The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

- (1) Religious sect or denomination, organization or association, organized for religious purposes;
- (2) Advocates violence or unlawful means to seek its goal;
- (3) Foreign party or organization;
- (4) Receives support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
- (5) Violates or fails to comply with laws, rules or regulations relating to elections;
- (6) Declares untruthful statements in its petition;
- (7) Ceased to exist for at least 1 year;
- (8) Fails to participate in the last 2 preceding elections; or
- (9) Fails to obtain at least 2% of the votes cast under the party-list system in the 2 preceding elections for the constituency in which it has registered. [Sec. 6, R.A. 7941]

“[T]he disqualification for failure to garner 2% party-list votes in two preceding elections should now be understood, in light of the Banat ruling, to mean failure to qualify for a party-list seat in two preceding elections for the constituency in which it has registered[,]” and not failure to garner 2% *per se*. [Phil. Guardians Brotherhood v. COMELEC, G.R. No. 190529, Apr. 29, 2010]

Certified List of Registered Parties

Certified List of Registered Parties.- The COMELEC shall, not later than sixty (60) days before election, prepare a certified list of national, regional, or sectoral parties, organizations or coalitions which have applied or who have manifested their desire to participate under the party-list system and distribute copies thereof to all precincts for posting in the polling places on election day. The names of the party-list nominees shall not be shown on the certified list. [Sec. 7, R.A. No. 7941]

The portion of Section 7 stating that the “names of the party-list nominees shall not be shown on the certified list” is not in itself unconstitutional, but it cannot be used by the COMELEC to justify its refusal to disclose the nominees upon proper request. COMELEC has a constitutional duty to disclose and release the names of the nominees (when requested) in light of the right to information and the constitutional policy of full disclosure and transparency in government. [Bantay Republic Act 7941 v. COMELEC, G.R. No. 177271 (2007)]

E. NOMINATION OF PARTY-LIST REPRESENTATIVES

Each registered party, organization or coalition shall submit to the COMELEC not later than 45 days before the election a list of names, not less than 5, from which party-list representatives shall be chosen in case it obtains the required number of votes.

A person may be nominated:

- (1) In 1 list only;
- (2) If he/she has given his/her consent in writing;
- (3) Is not a candidate for any [other] elective office;
- (4) Has not lost his bid for an elective office in the immediately preceding election.

No change of names or alteration shall be allowed after the same shall have been submitted to the COMELEC except when:

- (1) the nominee dies;
- (2) the nominee withdraws his nomination;
- (3) the nominee becomes incapacitated.

A COMELEC resolution adding to the above grounds the withdrawal of the nomination by the political party is invalid for being ultra vires. Moreover, there is a clear legislative intent to deprive the party-list organization of the right to change its nominee (once submitted to the COMELEC), for the "allowing the party-list organization to change its nominees through withdrawal of their nominations, or to alter the order of the nominations after the submission of the list of nominees circumvents the voters' demand for transparency." [*Lokin v. COMELEC*, G.R. No. 179431 (2010)]

F. PARAMETERS IN ALLOCATION OF SEATS FOR PARTY-LIST REPRESENTATIVES [*Banat v. COMELEC* (2009)]

Four parameters of the party-list system:

- (1) **20% Allocation:** 20% of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations.
- (2) **2% Threshold:** Garnering 2% of the total votes cast in the party-list elections guarantees a party-list organization one (1) seat.
- (3) **Additional Seats:** The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes.

N.B. The continued operation of the 2% threshold to the allocation of the

additional seats is unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats.

- (4) **3-Seat Cap:** The three-seat cap is constitutional.

N.B. It is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not require absolute proportionality for the party-list system. [*BANAT v. COMELEC*, G.R. No. 179271, Jul. 8, 2009 *Resolution on the Motion for Clarificatory Judgment*]

RULES ON COMPUTATION OF SEATS:

Two-Round Allocation

Step 1: Compute total number of seats allocated for party-list representatives

Step 2: Rank all party-list candidates from highest to lowest based on the number of votes they garnered

Step 3: Compute for each party-list candidate's percentage of votes garnered *in relation* to the total number of votes cast for party-list candidates.

Step 4: Round 1 – Allocate one (1) seat each for party-list that garnered at least 2% of the total number of votes.

Step 5: Round 2 – Assign additional seats from the balance (i.e. total number of party-list seats *minus* Round 1 allocations) by:

(a) Allocating one (1) seat for every whole integer (e.g. if a party garners 2.73% of the vote, assign it two [2] more seats; if 1.80%, assign it one [1] more seat); then

(b) Allocating the remaining seats (i.e. total seats *minus* Round 1 and Round 2a allocations) to those next in rank until all seats are completely distributed.

Step 6: Apply the 3-Seat Cap, if necessary. [*See BANAT v. COMELEC, supra*]

G. GUIDELINES AS TO WHO MAY PARTICIPATE IN THE PARTY-LIST ELECTIONS [*Atong Paglaum v. COMELEC (2013)*]

- (1) Three different groups may participate in the party-list system: (1) national parties or organizations, (2) regional parties or organizations, and (3) sectoral parties or organizations.
- (2) National parties or organizations and regional parties or organizations do not need to organize along sectoral lines and do not need to represent any “marginalized and underrepresented” sector.
- (3) Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition.
- (4) Sectoral parties or organizations may either be “marginalized and underrepresented” or lacking in “well-defined political constituencies.” It is enough that their principal advocacy pertains to the special interest and concerns of their sector. The sectors that are “marginalized and underrepresented” include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, handicapped, veterans, and overseas workers. The sectors that lack “well-defined political constituencies” include professionals, the elderly, women, and the youth.
- (5) A majority of the members of sectoral parties or organizations that represent the “marginalized and underrepresented” must belong to the

“marginalized and underrepresented” sector they represent. Similarly, a majority of the members of sectoral parties or organizations that lack “well-defined political constituencies” must belong to the sector they represent. The nominees of sectoral parties or organizations that represent the “marginalized and underrepresented,” or that represent those who lack “well-defined political constituencies,” either must belong to their respective sectors, or must have a track record of advocacy for their respective sectors. The nominees of national and regional parties or organizations must be *bona-fide* members of such parties or organizations.

- (6) National, regional, and sectoral parties or organizations shall not be disqualified if some of their nominees are disqualified, provided that they have at least one nominee who remains qualified.

H. EFFECT OF UNIMPLEMENTED TERM-SHARING AGREEMENT

The fact that the nominees of a party to the party-list elections entered in a term-sharing agreement is not a sufficient ground for the cancellation of the party's registration and accreditation if such agreement was not implemented. [*Senior Citizens' Party-List v. COMELEC (2013)*]

I. EFFECT OF CHANGE OF AFFILIATION

Any elected party-list representative who changes his political party or sectoral affiliation:

- (1) During his term of office shall forfeit his seat; or
- (2) Within 6 months before an election shall not be eligible for nomination as party-list representative under his new party or organization [*Sec. 15, R.A. 7941*]

“Section 15 covers changes in both political party and sectoral affiliation. And the latter may occur within the same party since multi-sectoral party-list organizations are qualified to participate in the Philippine party-list system. Hence, a nominee who changes his sectoral affiliation within the same party will only be eligible for nomination under the new sectoral affiliation if the change has been effected at least six months before the elections.” [*Amores v. HRET*, G.R. No. 189600 (2010)]

F. Candidacy

1. QUALIFICATIONS OF CANDIDATES

Candidate: Any person who files his certificate of candidacy within prescribed period shall only be considered as a candidate at the start of the campaign period for which he filed his certificate of candidacy. [Sec. 15, R.A. 9369]

Includes any registered national, regional, or sectoral party, organization or coalition thereof that has filed a manifestation to participate under the party-list system which has not withdrawn or which has not been disqualified before the start of the campaign period. [COMELEC Res. 8758, Feb. 4, 2010]

A. QUALIFICATIONS

Qualifications prescribed by law are continuing requirements and must be possessed for the duration of the officer's active tenure [*Frivaldo v. COMELEC* (1989); *Labo v. COMELEC* (1989)].

[See *Qualifications under Public Officers*.]

B. DISQUALIFICATIONS

i. Under Section 68 of the Omnibus Election Code [B.P. Blg. 881]

- (1) Is a permanent resident of or an immigrant to a foreign country [unless he has waived such status in accordance with the residency requirement for the concerned position];
- (2) Given money or other material consideration to influence, induce or corrupt voters or public officials performing electoral functions;
- (3) Committed acts of terrorism to enhance his candidacy;

- (4) Spent in his election campaign an amount in excess of that allowed;
- (5) Solicited, received or made prohibited contributions;
- (6) Violated provisions of the Omnibus Election Code, specifically:
 - (a) Engaged in election campaign or partisan political activity outside the campaign period and not pursuant to a political party nomination; [Sec. 80]
 - (b) Removed, destroyed, defaced lawful election propaganda; [Sec. 83]
 - (c) Engaged in prohibited forms of election propaganda; [Sec. 85]
 - (d) Violated election rules and regulations on election propaganda through mass media; [Sec. 86]
 - (e) Coerced, intimidated, compelled, or influenced any of his subordinates, members, or employees to aid, campaign or vote for or against any candidate or aspirant for the nomination or selection of candidates; [Sec. 261.d]
 - (f) Threatened, intimidated, caused, inflicted or produced any violence, injury, punishment, damage, loss or disadvantage upon any person or of the immediate members of his family, his honor or property, or used fraud to compel, induce or prevent the registration of any voter, or the participation in any campaign, or the casting of any vote, or any promise of such registration, campaign, vote, or omission therefrom; [Sec. 261.e]
 - (g) Unlawful electioneering; [Sec. 261.k]
 - (h) Violated the prohibition against release, disbursement

or expenditure of public funds 45 days before a regular election or 30 days before a special election; [Sec. 261.v]

- (i) Solicited votes or undertook propaganda on election day for or against any candidate or any political party within the polling place or within a 30m radius. [Sec. 261.cc.6]

ii. Under Section 12 of the Omnibus Election Code [B.P. Blg. 881]

- (1) Insane or incompetent
- (2) Sentenced by final judgment for:
 - (a) Subversion, insurrection, rebellion;
 - (b) Any offense for which he has been sentenced to a penalty of more than 18 months imprisonment; or
 - (c) A crime involving moral turpitude. [Sec. 12]

N.B. As to disqualifications under Sec. 12:

- These will not apply if the person has been given plenary pardon or amnesty.
- These are deemed removed upon declaration by competent authority that the insanity/incompetence has been removed, or after the expiration of a period of five years from service of sentence.

iii. Under Section 40 of the Local Government Code

- (1) Sentenced by final judgment for an offense (a) involving moral turpitude or (b) punishable by at least 1 year imprisonment.

The disqualification lasts for two years after service of sentence.

The provision "within 2 years after serving sentence" applies both to (1)

those who have been sentenced by final judgment for an offense involving moral turpitude and (2) those who have been sentenced by final judgment for an offense punishable by one year or more of imprisonment

Those who have not served their sentence by reason of the grant of probation should not be disqualified from running for a local elective office because the 2-year period of ineligibility does not even begin to run [*Moreno v. COMELEC* (2006)]

- (2) Removed from office as a result of an administrative case.

This disqualification does not retroactively apply to those who were removed from office as a result of an administrative case before the effectivity of the LGC. [*Grego v. COMELEC* (1997)]

- (3) Convicted by final judgment for violating the oath of allegiance to the Republic of the Philippines.
- (4) Dual citizenship.

Dual citizenship as a disqualification must refer to citizens with dual allegiance. For candidates with mere dual citizenship, the filing of certificate of candidacy is considered as an election of Filipino citizenship and renunciation of foreign citizenship. [*Mercado v. Manzano* (1999)]

For a natural born Filipino, who reacquired or retained his Philippine citizenship under RA 9225, to run for public office, he must: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer oath. [*Japzon v. COMELEC* (2009)]

With respect to a person with *dual allegiance*, candidate's oath of allegiance to the Republic of the Philippines and his Certificate of Candidacy do not substantially comply with the requirement of a personal and sworn renunciation of foreign citizenship. *Section 5(2) of R.A. No. 9225* compels natural-born Filipinos, who have been naturalized as citizens of a foreign country, but who reacquired or retained their Philippine citizenship (1) **to take the oath of allegiance under Section 3 of Republic Act No. 9225**, and (2) **for those seeking elective public offices in the Philippines, to additionally execute a personal and sworn renunciation** of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, to qualify as candidates in Philippine elections. [*Jacot vs. Dal* (2008); *De Guzman v. COMELEC* (2009)]

Hence, based on jurisprudence, the mere filing of certificate of candidacy is a sufficient form of renunciation for dual citizens but not for those who reacquired/retained Filipino citizenship under RA 9225.

While the act of using a foreign passport is not one of the acts constituting renunciation and loss of Philippine citizenship, it is nevertheless an act which repudiates the very oath of renunciation required for a former Filipino citizen who is also a citizen of another country to be qualified to run for a local elective position. [*Maquiling v. COMELEC*, G.R. 195649, April 16, 2013]

Compare *Maquiling* with *Poe-Llamanzares v. COMELEC*: There, the use of the foreign passport by

the presidential candidate occurred before she formally renounced her foreign citizenship; hence, the use was not taken against her.

- (5) Fugitive from justice in criminal and non-political cases here and abroad.

"Fugitive from justice" includes (a) those who flee after conviction to avoid punishment and (b) those who, after being charged, flee to avoid prosecution. This presupposes knowledge by the fleeing subject of either an already instituted indictment or of a promulgated judgment of conviction. [*Rodriquez v. COMELEC* (1996)]

- (6) Insane or feeble-minded.

B. FILING OF CERTIFICATES OF CANDIDACY

Sec. 73, B.P. 881. No person shall be eligible for any elective public office unless he files a sworn certificate of candidacy within the period fixed herein.

By who: The certificate of candidacy shall be filed by the candidate (a) personally or (b) by his duly authorized representative.

When: Any day from the commencement of the election period but not later than the day before the beginning of the campaign period.

In cases of postponement or failure of election, no additional certificate of candidacy shall be accepted except in cases of substitution of candidates. [*Sec. 75, B.P. 881*]

Effect of filing of 2 certificates of candidacy

- (1) No person shall be eligible for more than one office to be filled in the same election.

- (2) If he files a certificate of candidacy for more than one office he shall not be eligible for either.

Exception: Before the expiration of the period for the filing of certificates of candidacy, the person who has filed more than one certificate of candidacy, may:

- (a) declare under oath the office for which he desires to be eligible and
- (b) cancel the certificate of candidacy for the other office/s [*Sec. 73, B.P. 881*]

i. Automatic resignation

Any person holding a **public appointive office** or position including active members of the AFP, and other officers and employees in GOCCs, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy. [*Sec. 66(1), B.P. 881*]

Applies to employees of GOCCs without an original charter [*PNOC Energy Devt. Corp. v. NLRC* (1993)]

Any person holding an **elective office** or position shall not be considered resigned upon the filing of his certificate of candidacy for the same or any other elective office or position. [*Sec. 4, Comelec Resolution No. 8678, Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections*]

SC upheld the validity of the COMELEC Resolution in *Sec. 67, B.P. 811*, which deemed elective officials automatically resigned from office upon filing of their certificate of candidacy was repealed by *Sec. 14 R.A 9006, Fair Election Act*. This means that such elective official is no longer deemed resigned when he files his CoC for any position. On the allegation that the rule was violative of equal protection, the Court found substantial distinctions among appointive and elective officials. [*Quinto v. COMELEC* (2010)]

ii. Substitution of Candidates

Grounds: If after the last day for filing of the certificates of candidacy, an official candidate of a registered political party (a) dies, (b) withdraws or (c) is disqualified for any cause, he may be substituted by a candidate belonging to and nominated by the same political party.

When allowed: No substitute shall be allowed for any independent candidate. [*Recabo, Jr. v. COMELEC (1999)*]

Deadline: The substitute must file his certificate of candidacy not later than mid-day of the election day.

If the death, withdrawal or disqualification should happen between the day before the election and mid-day of the election day, certificate may be filed with:

- (a) any Board of Election Inspectors in the political subdivision where he is a candidate or
- (b) with the COMELEC if it is a national position [*Sec. 77, B.P. 881*]

N.B. For there to be a valid substitution of a candidate, the latter must have filed a valid certificate of candidacy.

A person who is disqualified under Sec. 68 OEC is only prohibited from continuing as a candidate but his CoC remains valid. He may therefore be substituted.

On the other hand, a person whose CoC is cancelled or denied due course under Sec. 78 for false material representation is considered to have a CoC that is void ab initio. Thus, he cannot be validly substituted. [*Talaga v. COMELEC (2012)*]

C. MINISTERIAL DUTY OF COMELEC TO RECEIVE CERTIFICATES OF CANDIDACY

Duty of COMELEC [*Sec. 76, B.P. 881*]

General Rule: The COMELEC shall have the ministerial duty to receive and acknowledge receipt of the certificates of candidacy provided said certificates are: under oath and contain all the required data and in the form prescribed by the Commission.

The COMELEC has no discretion to give or not to give due course to a certificate of candidacy filed in due form. While the COMELEC may look into patent defects in the certificate, it may not go into matters not appearing on their face. [*Abcede v. Imperial, (1958)*]

Exception: COMELEC may go beyond the face of the certificate of candidacy:

- (1) Nuisance candidates
- (2) Petition to deny due course to or cancel a certificate of candidacy [*See Romualdez-Marcos v. COMELEC (1995)*]

The Court also recently held that even without a petition to deny course to or cancel a certificate of candidacy, the COMELEC is under a legal duty to cancel the CoC of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. [*Jalosjos v. COMELEC (2012)*]

D. NUISANCE CANDIDATES

Petition to declare a duly registered candidate as a nuisance candidate

[Sec. 5, R.A. 6646]

The Commission may motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. [Sec. 69, B.P. Blg. 881]

See R.A. No. 6646 (1988) (Electoral Reforms Law of 1987), which has new provisions on nuisance candidates. The repealing clause of R.A. No. 6646 is a general repealing clause and did not repeal sec. 69 of the Omnibus Election Code.

<i>Who may initiate</i>	(a) The COMELEC, motu proprio; (b) Any interested party; (c) Any registered candidate for the same office [R.A. No. 6646]
<i>When to file</i>	Within 5 days from the last day for filing of certificates of candidacy. [R.A. No. 6646]

Grounds: Certificate of candidacy has been filed -

- (1) To put the election process in mockery or disrepute or
- (2) To cause confusion among the voters by the similarity of the names of the registered candidates or
- (3) Clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy

has been filed and thus prevent a faithful determination of the true will of the electorate [Sec. 69, B.P. 881]

E. PETITION TO DENY OR CANCEL CERTIFICATES OF CANDIDACY

[Sec. 78, Omnibus Election Code]

<i>Who may initiate</i>	Any person
<i>When to file</i>	Any time not later than 25 days from the time of the filing of the certificate of candidacy
<i>Exclusive grounds</i>	Any material representation contained therein as required under Section 74 hereof is false.

Elements of the ground:

- (1) **Materiality:** The false representation must pertain to a material fact that affects the right of the candidate to run for the election for which he filed his COC. Such material fact refers to a candidate's eligibility or qualification for elective office like citizenship, residence or status as a registered voter.
- (2) **Intent to Deceive:** Aside from the requirement of materiality, the false representation must consist of a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible. In other words, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. [Salic Maruhom v. COMELEC (2009)]

Jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC in division and not with the COMELEC en banc [Garvida v. Sales (1997)]

The ineligibility of the candidate may be based not only on the Omnibus Election Code, but also other provisions of law, e.g. perpetual special disqualification under the Revised Penal Code. [See *Jalsosjos v. COMELEC* (2012)]

F. EFFECTS OF DISQUALIFICATION

N.B. *Disqualification* (under sec. 68, among others) does not void a certificate of candidacy (COC), i.e. the candidate is merely prohibited from continuing as a candidate. In contrast, *Cancellation* (under sec. 78) results in the COC being void *ab initio*, i.e. the person was never a valid candidate.

i. Rules if the Candidate is Disqualified

- (1) **If the disqualification becomes final before election day:** Any candidate who has been declared by final judgment to be disqualified shall not be voted for and the votes cast for him shall not be counted.

Hence, generally, if Candidate X has already been disqualified before election day but still garnered the highest number of votes, those votes are considered as **stray votes**. The candidate with the next highest number of votes will be proclaimed. [See *Codilla v. De Venecia*, G.R. No. 150605 (2002)]

- (2) **If the disqualification is not yet final on election day:** If a candidate is not declared by final judgment before any election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or COMELEC shall continue with the trial and hearing of the action, inquiry, or protest and upon motion of the complainant or any intervenor, may during the pendency thereof, order the suspension of the proclamation of such candidate

whenever the evidence of his guilt is strong. [Sec. 6, R.A. 6646]

- (3) **If the disqualification is adjudged and becomes final after election day:** Votes cast in favor of the candidate are counted and are valid votes, but the candidate is prevented from further serving in office.

Generally: The second-placer does not assume office, and the rules on succession will be followed.

Rationale: "The wreath of victory cannot be transferred from the disqualified winner to the repudiated loser because the law then as now only authorizes a declaration of election in favor of the person who obtained a plurality of votes and does not entitle a candidate receiving the next highest number of votes to be declared elected." [Ocampo v. HRET, G.R. No. 158466 (2004)]

Exception: Notoriety/ Labo Doctrine: "The only time that a second placer is allowed to take the place of a disqualified winning candidate is when two requisites concur, namely: (a) the candidate who obtained the highest number of votes is disqualified; and (b) the electorate was fully aware in fact and in law of that candidate's disqualification as to bring such awareness within the realm of notoriety but the electorate still cast the plurality of the votes in favor of the ineligible candidate. [Talaga v. COMELEC, G.R. No. 196804 (2012), citing Labo v. COMELEC (1992)]

Rationale: Under this sole exception, the electorate may be said to have waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case the eligible candidate with the second highest number of votes may be deemed elected. [Labo v. COMELEC (1992)]

Note: The purpose of a disqualification proceeding is to prevent the candidate [a]

from running or, if elected, [b] from serving, or [c] to prosecute him for violation of the election laws. [*Ejercito v. COMELEC, G.R. No. 212398 (2014)*]

ii. Rule if the COC is Cancelled

Rule: The valid candidate with the highest number of votes will be proclaimed winner.

Hence, if Candidate X's COC was cancelled but he received the highest number of votes, Candidate Y will be proclaimed if he receives the next highest number of votes (because he is the valid candidate with the highest number of votes).

Rationale: A void COC cannot produce any legal effect. Thus, the votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election. [*Maquiling v. COMELEC (2014)*] The rationale in *Ocampo, supra*, therefore does not apply.

G. WITHDRAWAL OF CANDIDATES

A person who has filed a certificate of candidacy may, prior to the election, withdraw the same by submitting to the office concerned a written declaration under oath. [*Sec. 73, B.P. Blg. 881*]

Effects of filing or withdrawal of a certificate of candidacy

(1) Filing or withdrawal shall not affect whatever civil, criminal or administrative liabilities which a candidate may have incurred. [*Sec. 73, B.P. Blg. 881*]

(2) **Substitution:** If the candidate who withdraws is the official candidate of a registered or accredited political party, "the same political party may file a certificate of candidacy to replace the candidate." The substitute must file his COC not later than mid-day of election day. [*Sec. 77, B.P. Blg. 881*]

G. Campaign

Election campaign or partisan political activity: An act designed to promote the election or defeat of a particular candidate or candidates to a public office. [*Sec. 79, B.P. Blg. 881*]

Campaign includes:

- (1) Forming organizations or groups of persons;
- (2) Holding political caucuses, meetings, rallies or other similar assemblies;
- (3) Making speeches or commentaries;
- (4) Publishing or distributing campaign literature or materials for the purpose of soliciting votes and/or undertaking any campaign or propaganda to support or oppose the election of any candidate.

Campaign does not include:

- (1) Acts performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties [e.g. primaries, conventions];
- (2) Public expressions of opinions or discussions of probable issues in a forthcoming election or on attributes or criticisms of probable candidates proposed to be nominated in a forthcoming political party convention. [*Sec. 79, B.P. 881*]

Persons Prohibited from campaigning:

- (1) Members of the board of election inspections [*Sec. 173, B.P. 881*]
- (2) Civil service officers or employees [*Art. IX-B, Sec. 2 (4), Const.*]
- (3) Members of the military [*Art. XVI, Sec. 5 (3), Const.*]

- (4) Foreigners, whether juridical or natural persons. [Sec. 81, B.P. Blg. 881]

1. PREMATURE CAMPAIGNING

General Rule: Any election campaign or partisan political activity for or against any candidate outside of the campaign period is prohibited and shall be considered as an election offense. [Sec. 80, B.P. 881]

Exception: Political parties may hold political conventions to nominate their official candidates within 30 days before the start of the period for filing a certificate of candidacy. [Sec. 15, R.A. 9369]

A. PROHIBITED CAMPAIGNING DAYS

It is unlawful for any person to engage in an election campaign or partisan political activity on:

- (1) Maundy Thursday
- (2) Good Friday
- (3) Eve of Election Day and
- (4) Election Day [Sec. 3, COMELEC Resolution 8758]

In *Penera v. COMELEC*, at the time the supposed premature campaigning took place, Penera was not officially a “candidate” although she already filed her certificate of candidacy. Under Section 15 of R.A. 9369, a person who files his certificate of candidacy is considered a candidate only at the start of the campaign period, and unlawful acts applicable to such candidate take effect only at the start of such campaign period. Thus, a candidate is liable for an election offense only for acts done during the campaign period, not before. Before the start of the campaign period, such election offenses cannot be committed and any partisan political activity is lawful. [*Penera v. COMELEC* (2009)]

B. CAMPAIGN PERIODS

[Sec. 5, R.A. 7166]

President, Vice-President, Senators (i.e. offices with national constituencies)	90 days before the day of the election.
Members of the House of Representatives, Elective Local Government Officials (except Barangay Officials)	45 days before the day of the election

C. EQUAL ACCESS TO MEDIA TIME AND SPACE

Print advertisements shall not exceed 1/4 page, in broad sheet and 1/2 page in tabloids thrice a week per newspaper, magazine or other publications.

Bona fide candidates and registered political parties running for nationally elective office are entitled to not more than 120 mins of TV advertisement and 180 mins of radio advertisement whether by purchase or by donation.

Bona fide candidates and registered political parties running for locally elective office are entitled to not more than 60 mins of TV advertisement and 90 mins of radio advertisement whether by purchase or by donation.

Broadcast stations or entities are required to submit copies of their broadcast logs and certificates of performance to the COMELEC for the review and verification of the frequency, date, time and duration of advertisement broadcast for any candidate or political party.

All mass media entities are required to furnish the COMELEC with a copy of all contracts for advertising, promoting or opposing any political party or the candidacy of any person for public office within 5 days after its signing.

No franchise or permit to operate a radio or TV station shall be granted or issued, suspended or cancelled during the election period.

Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is a candidate for any elective public office or is a campaign volunteer for or employed or retained in any capacity by any candidate or political party shall:

- (1) Be deemed resigned, if so required by their employer or
- (2) Take a leave of absence from his/her work as such during the campaign period

No movie, cinematograph or documentary shall be publicly exhibited in a theater, television station or any public forum during the campaign period which:

- (1) Portrays the life or biography of a candidate
- (2) Is portrayed by an actor or media personality who is himself a candidate. [Sec. 6, R.A. 9006]

N.B. The airtime rules are applied on a per station basis. COMELEC Resolution No. 9615, which adopts the "aggregate-based" airtime limits (i.e. applying the limits to all TV and radio stations taken as a whole) unreasonably restricts the guaranteed freedom of speech and of the press. [*GMA Network, Inc. v. Commission on Elections, G.R. No. 205357 (2014)*]

D. ELECTION SURVEYS

Definition: The measurement of opinions and perceptions of the voters as regards a candidate's popularity, qualifications, platforms or a matter of public discussion in relation to the election, including voters' preference for candidates or publicly discussed issues during the campaign period.

N.B. Sec. 5.4 of RA 9006 providing that surveys affecting national candidates shall not be published 15 days before an election and surveys affecting local candidates shall not be published 7 days before an election is unconstitutional because (1) it imposes a prior restraint on the freedom of expression,

(2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period, and (3) the governmental interest sought to be promoted can be achieved by means other than the suppression of the freedom of expression. [*Social Weather Stations, Inc. v. COMELEC (2001)*]

Exit polls may only be taken subject to the following requirements:

- (1) Pollsters shall not conduct their surveys within 50m from the polling place, whether said survey is taken in a home, dwelling place and other places
- (2) Pollsters shall wear distinctive clothing
- (3) Pollsters shall inform the voters that they may refuse to answer and
- (4) The result of the exit polls may be announced after the closing of the polls on election day and must clearly identify the total number of respondents, and the places where they were taken. Said announcement shall state that the same is unofficial and does not represent a trend. [Sec. 5, R.A. 9006]

"The holding of exit polls and the dissemination of their results through mass media constitute an essential part of the freedoms of speech and of the press. Hence, the Comelec cannot ban them totally in the guise of promoting clean, honest, orderly and credible elections." [*ABS-CBN Broadcasting Corp. v. COMELEC, G.R. No. 133486 (2000)*]

E. RALLIES, MEETINGS, OTHER POLITICAL ACTIVITY

Application for Rallies, Meetings and Other Political Activity

- (1) All applications for permits must immediately be posted in a conspicuous place in the city or municipal building, and the receipt thereof acknowledged in writing.

- (2) Applications must be acted upon in writing by local authorities concerned within 3 days after their filing. If not acted upon within said period, they are deemed approved.
- (3) The only justifiable ground for denial of the application is when a prior written application by any candidate or political party for the same purpose has been approved.
- (4) Denial of any application for said permit is appealable to the provincial election supervisor or to the COMELEC whose decision shall be made within 48 hours and which shall be final and executory. [Sec. 87, B.P. 881]

2. PROHIBITED CONTRIBUTIONS

A. DEFINITIONS

Contribution: Gift, donation, subscription, loan, advance or deposit of money or anything of value, or a contract, promise or agreement to contribute (1) whether or not legally enforceable, (2) made for influencing the results of the elections.

Excludes services rendered without compensation by individuals volunteering their time in behalf of a candidate or political party;

Includes the use of facilities voluntarily donated by other persons, the money value of which can be assessed based on the rates prevailing in the area. [Sec. 94, B.P. 881]

Expenditures: Payment of money or anything of value or a contract, promise or agreement to make an expenditure for the purpose of influencing the results of the election

Includes the use of facilities personally owned by the candidate, the money value of the use of which can be assessed based on the rates prevailing in the area. [Sec. 94, B.P. 881]

B. PROHIBITED CONTRIBUTIONS

- (1) From Public or private financial institutions. Unless:
 - (a) The financial institutions are legally in the business of lending money
 - (b) The loan is made in accordance with laws and regulations AND
 - (c) The loan is made in the ordinary course of business
- (2) Natural and juridical persons operating a public utility or in possession of or exploiting any natural resources of the nation
- (3) Natural and juridical persons who hold contracts or sub-contracts to supply the government or any of its divisions, subdivisions or instrumentalities, with goods or services or to perform construction or other works
- (4) Grantees of franchises, incentives, exemptions, allocations or similar privileges or concessions by the government or any of its divisions, subdivisions or instrumentalities, including GOCCs
- (5) Grantees, within 1 year prior to the date of the election, of loans or other accommodations in excess of P100,000 by the government or any of its divisions, subdivisions or instrumentalities including GOCCs
- (6) Educational institutions which have received grants of public funds amounting to no less than P100,000
- (7) Officials or employees in the Civil Service, or members of the Armed Forces of the Philippines
- (8) Foreigners and foreign corporations, including foreign governments. [Sec. 95 and 96, B.P. 881]

N.B. The underlying commonality is conflict of interest in sensitive government operations, or areas where government grants licenses and special permits.

C. PROHIBITED FUND-RAISING ACTIVITIES

(1) The following are prohibited if held for raising campaign funds or for the support of any candidate from the start of the election period up to and including election day:

- (a) Dances
- (b) Lotteries
- (c) Cockfights
- (d) Games
- (e) Boxing bouts
- (f) Bingo
- (g) Beauty contests
- (h) Entertainments, or cinematographic, theatrical or other performances

(2) For any person or organization, civic or religious, directly or indirectly, to solicit and/or accept from (1) any candidate or (2) from his campaign manager, agent or representative, or (3) any person acting in their behalf, any gift, food, transportation, contribution or donation in cash or in kind from the start of the election period up to and including election day

Except: Normal and customary religious stipends, tithes, or collections on Sundays and/or other designated collection days [Sec. 97, B.P. 881]

D. PROHIBITED DONATIONS

What: Donations by candidate, spouse, relative within 2nd civil degree of consanguinity or affinity, campaign manager, agent or representative; treasurers, agents or representatives of political party

When: During campaign period, day before and day of the election. [Sec. 104. B.P. Blg. 881]

E. PROHIBITED WHETHER DIRECTLY OR INDIRECTLY

- (1) Donation, contribution or gift in cash or in kind
- (2) Undertake or contribute to the construction or repair of roads, bridges, school buses, puericulture centers, medical clinics and hospitals, churches or chapels cement pavements, or any structure for public use or for the use of any religious or civic organization.

Exceptions:

- (1) Normal and customary religious dues or contributions
- (2) Periodic payments for legitimate scholarships established and school contributions habitually made before the prohibited period [Sec. 104, B.P. 881]

3. LAWFUL AND PROHIBITED ELECTION PROPAGANDA

A. LAWFUL AND PROHIBITED ELECTION PROPAGANDA

- (1) Pamphlets, leaflets, cards, decals, stickers, or other written or printed materials not larger than 8.5x14 inches
- (2) Handwritten or printed letters urging voters to vote for or against any political party or candidate

- (3) Cloth, paper or cardboard posters, framed or posted, not larger than 2x3 feet
- (4) Streamers not larger than 3x8 feet are allowed at a public meeting or rally or in announcing the holding of such. May be displayed 5 days before the meeting or rally and shall be removed within 24 hours after such
- (5) Paid advertisements in print or broadcast media
 - (a) Bear and be identified by the reasonably legible or audible words "political advertisement paid for" followed by the true and correct name and address of the candidate or party for whose benefit the election propaganda was printed or aired. [Sec. 4.1, R.A. 9006]
 - (b) If the broadcast is given free of charge by the radio or TV station, identified by the words "airtime for this broadcast was provided free of charge by" followed by the true and correct name and address of the broadcast entity. [Sec. 4.2, R.A. 9006]
 - (c) Print, broadcast or outdoor advertisements donated to the candidate or political party shall not be printed, published, broadcast or exhibited without the written acceptance by said candidate or political party. Written acceptance must be attached to the advertising contract and submitted to the COMELEC within 5 days after its signing. [Sec. 4.3, R.A. 9006, cf. Sec. 6.3, R.A. 9006]
- (6) All other forms of election propaganda not prohibited by the Omnibus Election Code or the Fair Election Act of 2001. [Sec. 3, R.A. 9006]

B. PROHIBITED ACTS

i. FOR ANY FOREIGNER

- (1) Aid any candidate or political party, directly or indirectly
- (2) Take part or influence in any manner in any election
- (3) Contribute or make any expenditure in connection with any election campaign or partisan political activity [Sec. 81, B.P. 881]

ii. FOR ANY PERSON DURING THE CAMPAIGN PERIOD

- (1) Remove, destroy, obliterate or in any manner deface or tamper with lawful election propaganda
- (2) Prevent the distribution of lawful election propaganda [Sec. 83, B.P. 881]

iii. FOR ANY CANDIDATE, POLITICAL PARTY, ORGANIZATION OR ANY PERSON

- (1) Give or accept, directly or indirectly, free of charge, transportation, food or drinks or things of value during the five hours before and after a public meeting, on the day preceding the election, and on the day of the election;
- (2) Give or contribute, directly or indirectly, money or things of value for such purpose [Sec. 89, B.P. 881]

Note: Sec. 85 "Prohibited election propaganda" of B.P. 881 was repealed by Sec. 14 R.A. 9006.

4. LIMITATIONS ON EXPENSES

A. FOR CANDIDATES

- (1) President and VP: P10 for every voter currently registered
- (2) Other candidates: P3 for every voter currently registered in the constituency where he filed his certificate of candidacy

the offender shall be subject to perpetual disqualification to hold public office

B. FOR CANDIDATES WITHOUT A POLITICAL PARTY

P5 for every voter

C. FOR POLITICAL PARTIES

P5 for every voter currently registered in the constituency or constituencies where it has official candidates [Sec. 13, R.A. 7166]

5. STATEMENT OF CONTRIBUTIONS AND EXPENSES

Every candidate and treasurer of the political party shall file:

- (1) In duplicate with the COMELEC
- (2) The full, true and itemized statement of all contributions and expenditures in connection with the election
- (3) Within 30 days after the day of the election

A. EFFECT OF FAILURE TO FILE STATEMENT

No person elected to any public office shall enter upon the duties of his office until he has filed the statement of contributions and expenditures

The same prohibition shall apply if the political party which nominated the winning candidate fails to file the statements

B. ADMINISTRATIVE FINES (EXCEPT CANDIDATES FOR ELECTIVE BARANGAY OFFICE) [SEC. 14, RA 7166]

1st offense – P1,000-P30,000 in the discretion of the Commission to be paid within 30 days from receipt of notice of such failure otherwise it shall be enforceable by a writ of execution issued by the Commission against the properties of the offender

2nd offense – P2,000-P30,000 in the discretion of the Commission. In addition,

H. Board of Election Inspectors (BEI) And Board of Canvassers (BOC)

1. BOARD OF ELECTION INSPECTORS

A. COMPOSITION OF BOARD OF ELECTION INSPECTORS

i. Composition [Sec. 13, RA 6646 and Sec. 164, BP 881]

- (1) Chairman – public school teacher
- (2) Poll Clerk – public school teacher
- (3) Two members, each representing the two accredited political parties

ii. Qualifications [Sec. 166, BP 881]

- (1) Good moral character and irreproachable reputation
- (2) Registered voter of the city or municipality
- (3) Never been convicted of any election offense or any other crime punishable by more than 6 months of imprisonment, and there is no information pending against him for any election offense
- (4) Speak, read and write English or the local dialect
- (5) At least 1 member of the BEI shall be an information technology-capable person who is trained and certified by the DOST to use the Automated Elections System ("AES") (where AES shall be adopted) [Sec. 3, RA 9369]

iii. Disqualifications [Sec. 167, BP 881]

- (1) Related within 4th degree of consanguinity or affinity to any member of the BEI

- (2) Related within 4th degree of consanguinity or affinity to any candidate to be voted for in the polling place or his spouse
- (3) Engaged in any partisan political activity or take part in the election (except to discharge his duties as such and to vote) [Sec. 173, BP 881]

B. POWERS OF BOARD OF ELECTION INSPECTORS

[Sec. 10, COMELEC Resolution 9640, General Instructions for BEI on Testing and Sealing, Voting, Counting and Transmission of Election Results]

- (1) Conduct the voting in the polling place and administer the electronic counting of votes, including the testing and sealing of the PCOS machine
- (2) Print the election returns and transmit electronically the election results through the use of the PCOS machine to the
 - (a) City/Municipal Board of Canvassers
 - (b) Central Server
 - (c) Transparency Server
(Dominant Majority Party/Dominant Minority Party/Accredited Citizens' Arm/ KBP Server)
- (3) Act as deputies of the Commission in the conduct of the elections
- (4) Maintain order within the polling place and its premises; keep access thereto open and unobstructed; enforce obedience to its lawful orders and prohibit the use of cellular phones and camera by the voters. If any person refuses to obey the lawful orders of the BEI, or conducts himself in a disorderly manner in its presence or within its hearing and thereby interrupts or

disturbs its proceedings, the BEI may issue an order in writing directing any peace officer to take said person into custody until the adjournment of the meeting, but such order shall not be executed as to prevent said person from voting. A copy of such written order shall be attached to the Minutes;

- (5) Furnish to watchers Certificate of Votes (CEF No. A13) upon request
- (6) Perform such other functions as prescribed by the Code or by the rules and regulations promulgated by the Commission

2. BOARD OF CANVASSERS

A. DEFINITIONS AND FUNCTIONS

Canvass: The process by which the results in the election returns are tallied and totaled.

Certificates of canvass: Official tabulations of votes accomplished by district, municipal, city and provincial canvassers based on the election returns, which are the results of the ballot count at the precinct level.

Function of the BOC: The BOC shall canvass the votes by consolidating the electronically transmitted results or the results contained in the data storage devices used in the printing of the election returns. [Sec. 20, R.A. 9369]

B. COMPOSITION OF BOARD OF CANVASSERS [SEC. 20, R.A. 6646]

Province	City	Municipality
<i>Chairman</i>		
Provincial election supervisor or lawyer in the COMELEC regional office	City election registrar or a lawyer of COMELEC; In cities with more than 1 election registrar, COMELEC shall designate	Election registrar or COMELEC representative
<i>Vice-Chairman</i>		
Provincial fiscal	City fiscal	Municipal treasurer
<i>Member</i>		
Provincial superintendent of schools	City superintendent of schools	Most senior district school supervisor or in his absence, a principal of the school district or elementary school
In case of non-availability, absence, disqualification due to relationship, or incapacity for any cause of any of the members, COMELEC may appoint the following as substitutes, in the order named:		
Province	City	Municipality
<i>Chairman</i>		
Ranking lawyer of the COMELEC	Ranking lawyer of the COMELEC	Ranking lawyer of the COMELEC
<i>Vice-Chairman</i>		
-Provincial auditor -Registrar of Deeds -Clerk of Court nominated by the Executive Judge of the RTC; -Any other available appointive provincial official	-City auditor or equivalent; -Registrar of Deeds; -Clerk of Court nominated by the Executive Judge of the RTC; -Any other available appointive city official	-Municipal Administrator; -Municipal Assessor; -Clerk of Court nominated by the Executive Judge of the MTC; -Any other available appointive municipal official
<i>Member</i>		
Same as for Vice-Chairman	Same as for Vice-Chairman	Same as for Vice-Chairman

i. Prohibitions on BOC

- (1) Chairman and members shall not be related within the 4th civil degree of consanguinity or affinity to any of the candidates whose votes will be canvassed by said board, or to any member of the said board. [Sec. 222, B.P. 881]
- (2) No member or substitute member shall be transferred, assigned or detailed outside of his official station, nor shall he leave said station without prior authority of the COMELEC during the period beginning election day until the proclamation of the winning candidates. [Sec. 223, B.P. 881]
- (3) No member shall feign illness to be substituted on election day until the proclamation of the winning candidates. Feigning of illness constitutes an election offense. [Sec. 224, B.P. 881]

ii. Certificate of Canvass and Statement of Votes

- (1) Within one hour after the canvassing, the Chairman of the district or provincial BOC or the city BOC of those cities which comprise one or more legislative districts shall electronically transmit the certificates of canvass to:
 - (a) COMELEC sitting as the National BOC for senators and party-list representatives and
 - (b) Congress as the National BOC for the president and vice president, directed to the President of the Senate. [Sec. 20, R.A. 9369]
- (2) The certificates of canvass transmitted electronically and digitally signed shall be considered as official election results and shall be used as the basis for the proclamation of a winning candidate. [Sec. 20, R.A. 9369]

- (3) 30 copies shall be distributed in accordance with Sec. 21, R.A. 9369.

iii. National BOC for President and Vice-President**Composition**

The Senate and the House of Representatives in joint public session.

Functions:

- (1) Upon receipt of the certificates of canvass, the President of the Senate shall, not later than 30 days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session.
- (2) Congress upon determination of the authenticity and the due execution thereof in the manner provided by law shall:
 - (a) canvass all the results for president and vice-president and
 - (b) proclaim the winning candidates. [Sec. 22, R.A. 9369]

iv. National BOC for Senators and Party-list Representatives.**Composition**

The chairman and members of the COMELEC sitting en banc

Function

It shall canvass the results by consolidating the certificates of canvass electronically transmitted. Thereafter, the national board shall proclaim the winning candidates for senators and party-list representatives. [Sec. 23, R.A. 9369]

C. PROCLAMATION

Proclamation shall be after the canvass of election returns, in the absence of a perfected appeal to the COMELEC. The BOC shall proclaim the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay, on the basis of the certificates of canvass.

Failure to comply with this duty constitutes an election offense. [Sec. 231, B.P. 881]

i. When proclamation void

- (a) When it is based on incomplete returns [Castromayor v. COMELEC (1995)] or
- (b) When there is yet no complete canvass. [Jamil v. COMELEC (1997)]

A void proclamation is no proclamation at all, and the proclaimed candidate's assumption into office cannot deprive the COMELEC of its power to annul the proclamation.

ii. Partial proclamation

Notwithstanding pendency of any pre-proclamation controversy, COMELEC may summarily order proclamation of other winning candidates whose election will not be affected by the outcome of the controversy. [Sec. 21, R.A. 7166]

iii. Election resulting in a tie

BOC, by resolution, upon 5 days notice to all tied candidates, shall hold a special public meeting at which the board shall proceed to the drawing of lots of tied candidates and shall proclaim as elected the candidates who may be favored by luck. [Sec. 240, B.P. 881]

There is a tie when:

- (a) 2 or more candidates receive an equal and highest number of votes; or
- (b) 2 or more candidates are to be elected for the same position and 2 or more candidates received the same number

of votes for the last place in the number to be elected.

iv. Proclamation of a Lone Candidate

Upon the expiration of the deadline for the filing of certificates of candidacy in a special election called to fill a vacancy in an elective position other than for President and VP, when there is only 1 qualified candidate, he shall be proclaimed elected without holding the special election upon certification by the COMELEC that he is the only candidate for the office and is therefore deemed elected. [Sec. 2, R.A. 8295, Law on Proclamation of Solo Candidates]

I. Remedies and Jurisdiction in Election Law

1. PETITION NOT TO GIVE DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY

Section 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course to or cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

Section 69. Nuisance candidates. - The Commission may motu proprio or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run

for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. [B.P. Blg. 881]

2. PETITION FOR DISQUALIFICATION

Section 68. Disqualifications. - Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. [B.P. Blg. 881]

Comparison among Section 68, 78, and 69:

	Section 68	Section 78	Section 69
<i>Nature of the petition</i>	Petition for disqualification		Petition to deny due course to or cancel a certificate of candidacy (COC)
<i>Grounds for filing</i>	<p>(1) OEC, sec. 12</p> <p>(a) Declared by competent authority insane or incompetent</p> <p>(b) Sentenced by final judgment for subversion, insurrection, rebellion, or any offense for which the sentence is more than 18 months, or crime involving turpitude</p> <p>(2) OEC, sec. 68</p> <p>(a) Given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions;</p> <p>(b) Committed acts of terrorism to enhance candidacy;</p> <p>(c) Campaign expenses exceed the amount allowed by the OEC;</p> <p>(d) Soliciting, receiving, or making prohibited contributions</p> <p>(e) Other prohibited acts enumerated in OEC, sec. 68(e)</p> <p>(3) Local Gov't Code, sec. 40</p>	Material representation contained in the COC is false (sec. 78)	<p>Nuisance candidates (sec. 69), i.e.:</p> <p>(a) COC filed to put the election process in mockery or disrepute</p> <p>(b) Cause confusion among voters by similarity of names of the registered candidates</p> <p>(c) Other circumstances or acts which clearly demonstrate the lack of a bona fide intention to run for office</p>
<i>Effect</i>	Person is prohibited to continue as a candidate.	Person is not treated as a candidate at all, as if he/she never filed a COC.	
<i>Substitution</i>	Allowed	Prohibited	
<i>Period for filing</i>	Any time before proclamation of the winning candidate (COMELEC Res. No. 8696)	Within 25 days from filing of COC	Within 5 days from last day of filing of COCs

3. PETITION TO DECLARE FAILURE OF ELECTIONS

A. WHAT CONSTITUTES AN ELECTION

Plurality of votes sufficient for:

- (1) a choice conditioned on the plurality of valid votes or
- (2) a valid constituency regardless of the actual number of votes cast.

B. FAILURE OF ELECTIONS

i. Grounds

In any of such cases the failure or suspension of election must affect the result of the election

- (1) Election in any polling place has not been held on the date fixed due to force majeure, violence, terrorism, fraud, or other analogous causes.
- (2) Election in any polling place had been suspended before the hour fixed for the closing of the voting due to force majeure, violence, terrorism, fraud, or other analogous causes.
- (3) After the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof such election results in a failure to elect due to force majeure, violence, terrorism, fraud or other analogous causes. [Sec. 6, B.P. 881]

Sec. 4, R.A. 7166. The postponement, declaration of failure of election and the calling of special elections as provided in Sections 5, 6 and 7 of the Omnibus Election Code shall be decided by the Commission sitting en banc by a majority vote of its members. The causes for the declaration of a failure of election may occur before or after the casting of votes or on the day of the election.

Sec. 6, B.P. 881. The COMELEC shall call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect upon a verified petition by

any interested party and after due notice and hearing.

When: On a date reasonably close to the date of the election not held, suspended or which resulted in a failure to elect BUT not later than 30 days after the cessation of the cause of such postponement or suspension of the election or failure to elect. [Sec. 6, B.P. 881]

C. DECLARATION OF FAILURE OF ELECTION

It is neither an election protest nor a pre-proclamation controversy. [Borja v. Comelec, (1998)]

D. JURISDICTION

COMELEC, sitting en banc, may declare a failure of election by a majority vote of its members.

E. REQUISITES

The following conditions must concur:

- (1) No voting has taken place in the precincts concerned on the date fixed by law, or even if there was voting, the election nonetheless resulted in a failure to elect; and
- (2) The votes cast would affect the results of the election.

F. PROCEDURE:

- (1) Petitioner files verified petition with the Law Department of the COMELEC.
- (2) Unless a shorter period is deemed necessary by circumstances, within 24 hours, the Clerk of Court concerned serves notices to all interested parties, indicating therein the date of hearing, through the fastest means available.
- (3) Unless a shorter period is deemed necessary by the circumstances, within

2 days from receipt of the notice of hearing, any interested party may file an opposition with the Law Department of the COMELEC.

- (4) The COMELEC proceeds to hear the petition. The COMELEC may delegate the hearing of the case and the reception of evidence to any of its officials who are members of the Philippine Bar.
- (5) The COMELEC then decides whether to grant or deny the petition. This lies within the exclusive prerogative of the COMELEC.

4. PRE-PROCLAMATION CONTROVERSY

Pre-Proclamation Controversy – Questions regarding proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties, or by any accredited and participating party list group, before the board or directly with the Commission [Rule 3, Sec. 1, COMELEC Resolution No. 8804]

COMELEC Resolution No. 8804 applies to election disputes under the Automated Election System (AES) using the Precinct Count Optical Scan (PCOS) and shall cover pre-proclamation controversies and election protests [Rule 1, Sec. 2, COMELEC Resolution No. 8804]

A. JURISDICTION

COMELEC has exclusive jurisdiction over pre-proclamation cases. [Rule 3, Sec. 2, COMELEC Resolution No. 8804]. It may order, motu proprio or upon written petition, the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made. [Sec. 242, BP 881]

B. WHEN NOT ALLOWED

For the positions of President, Vice-President, Senator, and Member of the House of Representatives [Sec. 15, R.A. 7166]

C. NATURE OF PROCEEDINGS

Heard summarily by the COMELEC after due notice and hearing. This is because canvass and proclamation should be delayed as little as possible.

D. ISSUES THAT MAY BE RAISED

This enumeration is restrictive and exclusive:

- (1) Illegal composition or proceedings of the board of election canvassers;
- (2) Canvassed election returns are either:
 - (a) Incomplete
 - (b) Contain material defects;
 - (c) Appear to be tampered with or falsified; or
 - (d) Contain discrepancies in the same returns or in other authentic copies;
- (3) The election returns were:
 - (a) Prepared under duress, threats, coercion, intimidation or
 - (b) Obviously manufactured or not authentic
- (4) Substituted or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate(s).
- (5) Manifest errors in the Certificates of Canvass or Election Returns [Sec. 15, R.A. 7166; Chavez v. COMELEC]

N.B. In Rule 3, Sec. 1 of COMELEC Resolution No. 8804 (promulgated March 22, 2010) there are only 2 issues covered in a pre-proclamation controversy: (1) illegal

composition of the BOC, and (2) illegal proceedings of the BOC.

i. Illegal composition of the BOC

[Sec. 1, Rule 4, COMELEC Resolution No. 8804]

Exists when, among other circumstances, any of the members do not possess legal qualifications and appointments. The information technology capable person required to assist the BOC by RA 9369 shall be included as among those whose lack of qualifications may be questioned

ii. Illegal proceedings of the BOC

[Sec. 2, Rule 4, COMELEC Resolution No. 8804]

Exists when the canvassing is a sham or mere ceremony, the results of which are predetermined and manipulated as when any of the following circumstances are present:

- (1) Precipitate canvassing
- (2) Terrorism
- (3) Lack of sufficient notice to the members of the BOC
- (4) Improper venue

E. ISSUES THAT CANNOT BE RAISED

- (1) Appreciation of ballots, as this is performed by the BEI at the precinct level and is not part of the proceedings of the BOC [Sanchez v. COMELEC, (1987)]
- (2) Technical examination of the signatures and thumb marks of voters [Matalam v. COMELEC (1997)]
- (3) Prayer for re-opening of ballot boxes [Alfonso v. COMELEC, (1997)]
- (4) Padding of the Registry List of Voters of a municipality, massive fraud and terrorism [Ututalum v. COMELEC (1990)]

(5) Challenges directed against the Board of Election Inspectors [Ututalum v. COMELEC (supra)]

(6) Fraud, terrorism and other illegal electoral practices. These are properly within the office of election contests over which electoral tribunals have sole, exclusive jurisdiction. [Loong v. COMELEC, (1992)]

F. PROCEDURE

i. Questions involving the composition or proceedings of the board of canvassers, or correction of manifest errors

Where: Either in the Board of Canvassers or directly with the COMELEC. [Sec. 17, R.A. 7166]

When: A petition involving the illegal composition or proceedings of the board, must be filed immediately when the board begins to act as such [Laodeno v. COMELEC], or at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the board, or immediately at the point where the proceedings are or begin to be illegal. Otherwise, by participating in the proceedings, the petitioner is deemed to have acquiesced in the composition of the BOC.

If the petition is for correction, it must be filed not later than 5 days following the date of proclamation, and must implead all candidates who may be adversely affected thereby. [Sec. 5(b), Rule 27, COMELEC Rules of Procedure]

ii. Matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns and certificates of canvass

Where: Only with the Board of Canvassers

When: At the time the questioned return is presented for inclusion in the canvass.

Who: Any candidate, political party or coalition of political parties

Non-compliance with any of the steps above is fatal to the pre-proclamation petition.

iii. Pre-proclamation controversies under COMELEC Resolution No. 8804

If filed before the BOC

Upon receipt of the verified petition, the BOC shall immediately announce the fact of the filing of said petition and the ground/s raised

BOC shall immediately deliberate on the petition and make a prompt resolution within 24 hrs; reduced into writing

If the decision is in favor of the petition, it shall immediately inform the Commission of its resolution; the Commission shall make appropriate action

In no case shall the receipt by the BOC of the electronically transmitted precinct, municipal, city or provincial results, be suspended by the filing of the said petition

iv. Appeal of an adverse resolution

The petitioner may appeal an adverse resolution by the BOC to the COMELEC, by notifying the BOC of his or her intent to appeal, through a verbal and a written and verified notice of appeal

Notice on the BOC shall not suspend the formal proclamation of the official results of

the election until the final resolution of the appeal

48 hrs. from such notice to the BOC, the petitioner shall submit before the Board a Memorandum on appeal stating the reasons why the resolution being questioned is erroneous and should be reversed

Upon receipt by the BOC of the memorandum, the Board shall forward the entire records of the petition at the expense of the petitioner

Upon receipt of the records, the petition shall be docketed by the Clerk of Commission and submitted to the COMELEC en banc for consideration and decision

Within 5 days, the COMELEC shall render its decision on appeal

v. If filed directly with the Commission

Upon receipt of the petition by the COMELEC, the Clerk of the Commission shall docket the same and send summons to the BOC concerned with an order directing it to submit, through the fastest verifiable means available, its answer within 48 hrs.

COMELEC en banc shall resolve the petition within 5 days from the filing of the answer or upon the expiration of the period to file the same

G. EFFECT OF FILING OF PRE-PROCLAMATION CONTROVERSY

The period to file an election contest shall be suspended during the pendency of the pre-proclamation contest in the COMELEC or the Supreme Court.

The right of the prevailing party in the pre-proclamation contest to the execution of COMELEC's decision does not bar the losing party from filing an election contest.

Despite the pendency of a pre-proclamation contest, the COMELEC may order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy.

H. EFFECT OF PROCLAMATION OF WINNING CANDIDATE

General Rule: A pre-proclamation controversy shall no longer be viable after the proclamation and assumption into office by the candidate whose election is contested. The remedy is an election protest before the proper forum.

However, the prevailing candidate may still be unseated even though he has been proclaimed and installed in office if:

- (1) The opponent is adjudged the true winner of the election by final judgment of court in an election contest;
- (2) The prevailing party is declared ineligible or disqualified by final judgment of a court in a quo warranto case; or
- (3) The incumbent is removed from office for cause.

I. EFFECT OF FILING PETITION TO ANNUL OR SUSPEND PROCLAMATION

The filing of the petition suspends the running of the period to file an election protest. [Alangdeo v. COMELEC, (1989)]

No law provides for a reglementary period within which to file a petition for the annulment of an election if there is as yet no proclamation. [Loong v. COMELEC (supra)]

5. ELECTION PROTEST

Election protest: A contest between the defeated and winning candidates on the ground of frauds or irregularities in the casting and counting of the ballots, or in the

preparation of the returns. It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office. [Samad v. COMELEC (1993)]

General Rule [applicable to protest and quo warranto]: The filing of an election protest or a petition for quo warranto precludes the subsequent filing of a pre-proclamation controversy, or amounts to the abandonment of one earlier filed, thus depriving the COMELEC of the authority to inquire into and pass upon the title of the protestee or the validity of his proclamation.

The reason is that once the competent tribunal has acquired jurisdiction of an election protest or a petition for quo warranto, all questions relative thereto will have to be decided in the case itself and not in another proceeding. This procedure will prevent confusion and conflict of authority. Conformably, the Court has ruled in a number of cases that after a proclamation has been made, a pre-proclamation case before the COMELEC is no longer viable. [Samad v. COMELEC (1993)]

Exceptions: The rule admits of exceptions, however, as where:

The board of canvassers was improperly constituted;

Quo warranto was not the proper remedy;

What was filed was not really a petition for quo warranto or an election protest but a petition to annul a proclamation;

The filing of a quo warranto petition or an election protest was expressly made without prejudice to the pre-proclamation controversy or was made ad cautelam; and

The proclamation was null and void. [Samad v. COMELEC, (1993)]

A. NATURE

Summary proceeding of a political character

B. PURPOSE

To ascertain the candidate lawfully elected to office

C. WHO MAY FILE

A candidate who has duly filed a certificate of candidacy and has been voted for.

D. WHEN

Within 10 days after the proclamation of the results of the election.

It is suspended during the pendency of a pre-proclamation controversy

It should be decided within 15 days from filing in case of barangay officials

E. WHO HAS JURISDICTION

- (1) COMELEC: Over all contests relating to the elections, returns and qualifications of all elective regional, provincial and city officials [Sec. 250. BP 881]
- (2) RTC: Over contests involving municipal officials [Sec. 251. BP 881]
- (3) MTC: Over election contests involving barangay officials [Sec. 252. BP 881]

F. GROUNDS

- (1) Fraud
- (2) Terrorism
- (3) Irregularities
- (4) Illegal acts committed before, during, or after the casting and counting of votes

G. PAYMENT OF DOCKET FEE

A protestant has to pay a docket fee of P300 and an additional docket fee if there is a claim for damages. Failure to pay the basic docket fee shall result to the dismissal of the protest [Soller v. COMELEC (2000)]

H. EFFECT OF FILING PETITION TO ANNUL OR TO SUSPEND THE PROCLAMATION

The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or quo warranto proceedings. [Sec. 248. BP 881]

6. QUO WARRANTO

Petition for quo warranto: Under the Omnibus Election Code raises in issue the disloyalty or ineligibility of the winning candidate. It is a proceeding to unseat the respondent from office but not necessarily to install the petitioner in his place. [Samad v. COMELEC, (1993)]

In a quo warranto proceeding, the petitioner is not occupying the position in dispute. Moreover, under the Omnibus Election Code, quo warranto is proper only for the purpose of questioning the election of a candidate on the ground of disloyalty or ineligibility. [Samad v. COMELEC, (1993)]

It is a proceeding to unseat the ineligible person from office but not to install the protestant in his place. In this sense, it is strictly speaking, not a contest where the parties strive for supremacy. While the respondent may be unseated, the petitioner will not be seated.

A. WHO MAY FILE

Any voter

B. WHEN TO FILE

Within 10 days after the proclamation of the results of the election.

C. WHO HAS JURISDICTION

- (1) COMELEC: Over petitions for quo warranto involving regional, provincial and city officials [Sec. 253. BP 881]
- (2) RTC: over petitions for quo warranto involving municipal officials [Sec. 253. BP 881]
- (3) MTC: over petitions for quo warranto involving barangay officials [Sec. 253. BP 881]

D. GROUNDS

- (1) Ineligibility
- (2) Disloyalty to the Republic

<i>Election Protest</i>	<i>Quo Warranto</i>
Strictly a contest between the defeated and winning candidates based on grounds of election frauds or irregularities as to who actually obtained the majority of the legal votes and therefore is entitled to hold the office	Refers to questions of disloyalty or ineligibility of the winning candidate. It is a proceeding to unseat the ineligible person from office, but not to install the protestant in place
Can only be filed by a candidate who has duly filed a certificate of candidacy and has been voted for	Can be filed by any voter. It is not considered a contest where the parties strive for supremacy
A protestee may be ousted and the protestant seated in the office vacated	While the respondent may be unseated, the petitioner will not be seated

<i>Quo Warranto in an Elective Office</i>	<i>Quo Warranto in an Appointive Office</i>
Issue is the eligibility or loyalty of the officer-elect	Issue is the legality of the appointment
Court or tribunal cannot declare the protestant (or the candidate who obtained the second highest number of votes) as having been elected	The court determines who of the parties has legal title to the office

E. EXECUTION PENDING APPEAL

The trial court may grant a motion for execution pending appeal because the mere filing of an appeal does not divest the trial court of its jurisdiction over a case and to resolve pending incidents. The grant must be based on "valid and special reasons," i.e.:

- (1) The public interest is involved or the will of the electorate
- (2) The shortness of the remaining portion of the term
- (3) The length of time that the election contest has been pending

The rule is strictly construed against the movant and only when the reason is of such urgency will such execution pending appeal be allowed, as it is an exception to the general rule

J. Prosecution of Election Offenses

1. JURISDICTION OVER ELECTION OFFENSES

A. INVESTIGATION AND PROSECUTION

COMELEC has exclusive jurisdiction to investigate and prosecute cases involving violation of election laws [Sec. 2 (6), Art. IX-C, Const]

However, it may validly delegate the power to the Provincial Prosecutor or to the Ombudsman.

In the event that the COMELEC fails to act on any complaint within 4 months from its filing, the complainant may file the complaint with the fiscal or the Department of Justice, if warranted. [Sec. 265, B.P. 881]

It is not the duty of the COMELEC, as investigator and prosecutor, to gather proof in support of a complaint filed before it [Kilosbayan v. COMELEC (1997)]

B. TRIAL AND DECISION

General Rule: RTCs have exclusive original jurisdiction to try and decide any criminal actions or proceedings for violation of election laws. [Sec. 268, B.P. 881]

Exception: MTCs exercise jurisdiction only over offenses relating to failure to register or to vote

2. PREFERENTIAL DISPOSITION OF ELECTION OFFENSES

The investigating officer shall resolve the case within 5 days from submission.

The courts shall give preference to election cases over all other cases except petitions for writ of habeas corpus.

A. ELECTION OFFENSES

i. Registration

- (1) Failure of the Board of Election Inspectors to post the list of voters in each precinct. [Sec. 9, R.A. 7166];
- (2) Change or alteration or transfer of a voter's precinct assignment in the permanent list of voters without the express written consent of the voter [Sec. 4, R.A. 8189]

ii. Certificate of candidacy

- (1) Continued misrepresentation or holding out as a candidate of a disqualified candidate or one declared by final and executory judgment to be a nuisance candidate [Sec. 27f, R.A. 6646]
- (2) Knowingly inducing or abetting such misrepresentation of a disqualified or nuisance candidate [Sec. 27f, R.A. 6646];
- (3) Coercing, bribing, threatening, harassing, intimidating, terrorizing, or actually causing, inflicting or producing violence, injury, punishment, torture, damage, loss or disadvantage to discourage any other person or persons from filing a certificate of candidacy in order to eliminate all other potential candidates from running in a special election [Sec. 5, R.A. 8295]

iii. Election campaign

- (1) Appointment or use of special policemen, special agents or the like during the campaign period [Sec. 261m, B.P. 881]
- (2) Use of armored land, water or aircraft during the campaign period [Sec. 261r, B.P. 881]

- (3) Unlawful electioneering [Sec. 261k, B.P. 881]
- (4) Acting as bodyguards or security in the case of policemen and provincial guards during the campaign period [Sec. 261t, B.P. 881]
- (5) Removal, destruction, obliteration, or tampering of lawful election propaganda, or preventing the distribution thereof [Sec. 83, B.P. 881 vis-à-vis Sec. 262, B.P. 881]

iv. Voting

- (1) Vote-buying and vote-selling [Sec. 261a, B.P. 881]
- (2) Conspiracy to bribe voters [Sec. 261b, B.P. 881]: A disputable presumption of a conspiracy to bribe voters is created when there is proof that at least 1 voter in different precincts representing at least 20% of the total precincts in any municipality, city or province has been offered, promised or given money, valuable consideration or other expenditure by a candidate's relatives, leaders and/or sympathizers for the purpose of promoting the election of such candidate. [Sec. 28, R.A. 6646]
- (3) Coercion of subordinates to vote for or against any candidate [Sec. 261d, B.P. 881]
- (4) Dismissal of employees, laborers, or tenants for refusing or failing to vote for any candidate [Sec. 261d(2), B.P. 881]
- (5) Being a flying voter [Sec. 261z (2), B.P. 881]

v. Counting of votes

- (1) Tampering, increasing, decreasing votes, or refusal to correct tampered votes after proper verification and hearing by any member of the board of election inspectors [Sec. 27b, R.A. 6646]
- (2) A special election offense to be known as electoral sabotage and the penalty to

be imposed shall be life imprisonment. [Sec. 42, RA 9369]

- (3) Refusal to issue to duly accredited watchers the certificate of votes cast and the announcement of the election, by any member of the board of election inspectors [Sec. 27c, R.A. 6646]

vi. Canvassing

Any chairperson of the board of canvassers who fails to give notice of meeting to other members of the board, candidate or political party as required [Sec. 27e, R.A. 6646]

vii. Acts of government or public officers

- (1) Appointment of new employees, creation of new positions, promotion, or giving salary increases within the election period [Sec. 261g, B.P. 881]
- (2) Transfer of officers and employees in the civil service within the election period without the prior approval of the COMELEC [Sec. 261h, B.P. 881]
- (3) Intervening of public officers and employees in the civil service in any partisan political activity [Sec. 261i, B.P. 881]
- (4) Use of public funds for an election campaign [Sec. 261o, B.P. 881]
- (5) Illegal release of prisoners before and after election [Sec. 261n, B.P. 881]
- (6) Release, disbursement or expenditure of public funds during the prohibited period [Sec. 261v, B.P. 881]
- (7) Construction of public works, etc. during the prohibited period [Sec. 261w, B.P. 881]
- (8) Suspension of elective local officials during the election period without prior approval of the COMELEC [Sec. 261x, B.P. 881]

viii. Coercion, intimidation, violence

- (1) Coercion of election officials and employees
- (2) Threats, intimidation, terrorism, use of fraudulent devices or other forms of coercion [Sec. 261e, B.P. 881]
- (3) Use of undue influence [Sec. 261j, B.P. 881]
- (4) Carrying deadly weapons within the prohibited area [Sec. 261p, B.P. 881]
- (5) Carrying firearms outside residence or place of business [Sec. 261q, B.P. 881]
- (6) Organization or maintenance of reaction forces, strike forces, or similar forces during the election period [Sec. 261u, B.P. 881]

ix. Other prohibitions

- (1) Unauthorized printing of official ballots and election returns with printing establishments that are not under contract with the COMELEC [Sec. 27a, R.A. 6646]
- (2) Wagering upon the results of elections [Sec. 261c, B.P. 881]
- (3) Sale, etc. of intoxicating liquor on the day fixed by law for the registration of voters in the polling place, or the day before the election or on election day [Sec. 261dd (1), B.P. 881]
- (4) Opening booths or stalls within 30 meters of any polling place [Sec. 261dd (2), B.P. 881]
- (5) Holding fairs, cockfights, etc. on Election Day [Sec. 261dd (3), B.P. 881]
- (6) Refusal to carry election mail during the election period [Sec. 261dd (4), B.P. 881]. In addition to the prescribed penalty, such refusal constitutes a ground for cancellation or revocation of certificate of public convenience or franchise.
- (7) Discrimination in the sale of airtime [Sec. 261dd (5), B.P. 881] In addition to the prescribed penalty, such refusal

constitutes a ground for cancellation or revocation of the franchise.

Note: Good faith is not a defense, as election offenses are generally mala prohibita.

B. PENALTIES**i. For individuals**

- (1) Imprisonment of not less than 1 year but not more than 6 years, without probation [Sec. 264, B.P. 881]
- (2) Disqualification to hold public office
- (3) Deprivation of the right of suffrage

ii. For a Foreigner

- (1) Imprisonment of not less than 1 year but not more than 6 years (without probation);
- (2) Deportation after service of sentence

iii. For a Political Party

Payment of a fine not less than P10,000 after a criminal conviction

iv. Persons Required by Law to Keep Prisoners in their Custody

For prisoners illegally released from any penitentiary or jail during the prohibited period, where such prisoners commit any act of intimidation, terrorism or interference in the election, prison mayor in its maximum period. [Sec. 264, B.P. 881]

3. ARRESTS IN CONNECTION WITH ELECTION CAMPAIGN

Only upon a warrant of arrest issued by a competent judge after all the requirements of the Constitution have been strictly complied with

4. PRESCRIPTION

Five years from the date of their commission. If the discovery of the offense be made in an election contest proceeding, the period of prescription shall commence on the date on which the judgment in such proceedings becomes final and executory. [Sec. 267, B.P. 881]

5. GRANT OF TRANSACTIONAL IMMUNITY

Any person guilty of violations of Sec. 261a (Vote-buying and vote-selling) and 261b (Conspiracy to bribe voters) of BP 881 who voluntarily gives information and willingly testifies on any violation of said sections in any official investigation or proceeding shall be exempt from prosecution and punishment for the offenses with reference to which his information and testimony were given, without prejudice to his liability for perjury or false testimony. [Sec. 28, RA 6646]

6. PROHIBITED ACTS UNDER RA 9369

- (1) Utilizing without authorization, tampering with, damaging, destroying or stealing:
 - a. Official ballots, election returns, and certificates of canvass of votes used in the system; and
 - b. Electronic devices or their components, peripherals or

supplies used in the AES such as counting machine, memory pack/diskette, memory pack receiver and computer set

- (2) Interfering with, impeding, absconding for purpose of gain, preventing the installation or use of computer counting devices and the processing, storage, generation and transmission of election results, data or information
- (3) Gaining or causing access to using, altering, destroying or disclosing any computer data, program, system software, network, or any computer-related devices, facilities, hardware or equipment, whether classified or declassified
- (4) Refusal of the citizens' arm to present for perusal its copy of election return to the board of canvassers
- (5) Presentation by the citizens' arm of tampered or spurious election returns
- (6) Refusal or failure to provide the dominant majority and dominant minority parties or the citizens' arm their copy of election returns and
- (7) The failure to post the voters' list within the specified time, duration and in the designated location shall constitute an election offense on the part the election officer concerned.

A. PENALTIES

General Rule:

- (1) Imprisonment of 8 years and one day to 12 years without possibility of parole
- (2) Perpetual disqualification to hold public and any non-elective public office and
- (3) Deprivation of the right of suffrage.

Exception: Those convicted of the crime of electoral sabotage, which includes acts or offenses committed in any of the following instances:

(1) National elective office

When the tampering, increase and/or decrease of votes perpetrated or the refusal to credit the correct votes or to deduct tampered votes is/are committed in the election of a national elective office which is voted upon nationwide and the tampering, increase and/ or decrease of votes or refusal to credit the correct votes or to deduct tampered votes, shall adversely affect the results of the election to the said national office to the extent that losing candidate/s is /are made to appear the winner/s;

(2) Regardless of the elective office involved

When the tampering, increase and/or decrease of votes committed or the refusal to credit the correct votes or to deduct tampered votes perpetrated is accomplished in a single election document or in the transposition of the figure / results from one election document to another and involved in the said tampering increase and/or decrease or refusal to credit correct votes or deduct tampered votes exceed 5,000 votes, and that the same adversely affects the true results of the election

(3) Any and all other forms or tampering increase/s and/ or decrease/s of votes perpetuated or in cases of refusal to credit the correct votes or deduct the tampered votes, where the total votes involved exceed 10,000 votes

Any and all other persons or individuals determined to be in conspiracy or in connivance with the members of the BEIs or BOCs involved shall be meted the same penalty of life imprisonment.

POLITICAL LAW

LOCAL GOVERNMENTS

I. Public Corporations

A. CONCEPT

Corporation – An artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence. [Sec. 2, Corp. Code; Sec. 2, Act No. 1459]

A.1. COMPARISON [MARTIN]

Public Corporations	Private Corporations	Quasi-Public Corporations
Corporations created by the state as its own device and agency for the accomplishment of parts of its own public works.	Corporations organized wholly for the profit or advantage of their own members, or some "private purpose, benefit, aim, or end." [Sec. 3, Act. No. 1459]	Private corporation that renders public service or supply public wants. Organized for the gain or benefit of its members, but required by law to discharge functions for the public benefit. [<i>Phil. Society for the Prevention of Cruelty to Animals v. COA</i> , G.R. No. 169752 (2007)]
Created by the <i>state</i> , either by general or special act.	Created by the <i>will of the incorporators</i> , with the recognition of the state [i.e. through the CORP. CODE]	[May be created by special charter or under the general law. (e.g. utility, railroad, telephone, transportation companies)]

A.2. TEST TO IDENTIFY PUBLIC OR PRIVATE CHARACTER

"The true criterion [...] is the **totality of the relation of the corporation to the State**. If the corporation is [1] created by the State as [2] the [State's] own agency or instrumentality to [3] help it in carrying out its governmental functions, then the corporation is considered public; otherwise, it is private."

Hence, "provinces, chartered cities, and barangays can best exemplify public corporations."

On the other hand, the Philippine Society for the Prevention of Cruelty to Animals, while created by Act No. 1285, is a *private* corporation as (1) it is not subject to state control, and (2) its powers to arrest offenders of animal welfare laws and to serve processes have been withdrawn by C.A. No. 148. [*Phil. Society for the Prevention of Cruelty to Animals v. COA* (2007)]

i. Public Corporations Distinguished from GOCCs

<i>Municipal Corporations</i>	<i>Government-Owned or Controlled Corporations (GOCCs)</i>
<i>Purpose</i>	
Local governance over inhabitants of cities/towns; agency of the State for assistance in civil government of the country for regulation of local and internal affairs.	Agencies of the State for limited purposes to take charge of some public or state work, other than community work. [<i>Nat'l Waterworks & Sewerage Authority v. NWSA Consolidated Unions</i> , G.R. No. L-18939 (1964)]
<i>Personality</i>	
Political subdivision of the Republic of the Philippines	<p>Separate and distinct from the government;</p> <p>Subject to provisions of the Corporation Code;</p> <p>Mere fact that the Government is a majority stockholder of the corporation does not make it a public corporation;</p> <p>Government gives up its sovereign character with regard to transactions of the corporation. [<i>Bacani v. Nat'l Coconut Corp.</i>, G.R. No. L-9657 (1956)]</p>
<i>Nature and Status</i>	
<p>Constituted by law and possessed of substantial control over its own affairs;</p> <p>Autonomous in the sense that it is given more powers, authority, responsibilities, and resources;</p>	<p>Organized as a stock or non-stock corporation [Sec. 2(13), ADM. CODE,; <i>MIAA v. CA</i>, G.R. No. 155650 (2006)]</p> <p>Independent agency of the government for administrative purposes; Has corporate powers to be exercised by its board of directors, and its own assets and liabilities; [<i>Nat'l Waterworks & Sewerage Authority v. NWSA Consolidated Unions</i> (1964)]</p>

Vesting of corporate powers on a government instrumentality does not make the latter a GOCC if it is not organized as a stock or non-stock corporation. [*MIAA v. CA* (2006)]

B. CLASSIFICATIONS

B.1. TRADITIONAL (PRE-LOCAL GOV'T CODE) CLASSIFICATIONS [SINCO]

	<i>Nature and Creation</i>	<i>Function</i>
<i>Municipal Corp. Proper</i>	Body corporate and politic organized for the government of a definite locality [e.g. LGUs]	Agency (1) primarily to regulate and administer the internal affairs of a locality and (2) to assist in the civil government of a country
<i>Non-Municipal Corp.</i>	Created by the state as its own device and agency [i.e. not of or for a particular locality] [e.g. Rehabilitation Finance Corp., Phil. Nat'l Red Cross, Boy Scouts of the Phils.]	For the accomplishment of some parts of its own public work <i>other than</i> the local government carried on in designated areas by municipal corporations
<i>Quasi-Corp. (Municipal)</i>	State agencies having a corporate form but with merely nominal independent powers, but actually under constant control of the State;	Governmental or police functions
<i>Quasi-Corp. (Non-Municipal)</i>	Created for a narrow and limited purpose [MARTIN]	State functions which are not political in nature

1) Quasi-Corporations

- Public corporations created as agencies of the State for a narrow and limited purpose;
- Not possessed with powers and liabilities of self-governing corporations; and
- Take charge of some public or state work for the general welfare (other than government of a community) [MARTIN]
- Include Quasi-Municipal Corporations (e.g. water districts)

2) Municipal Corporations

A body politic and corporate constituted by the incorporation of the inhabitants of a locality for the purpose of local government. [MARTIN] (e.g. LGUs)

<i>Municipal Corporation Proper</i>	<i>Quasi-Municipal Corporation</i>
Exists and is governed by a charter	[Does not necessarily exist by virtue of a charter (e.g. water districts)]
An agency of the state invested with the power of local government [MARTIN]	Operates directly as an agency of the State to help in the administration of public functions

II. Municipal Corporations

A. ELEMENTS

- (1) Legal creation or incorporation;
- (2) Corporate name by which the entity is known and in which all corporate acts are done;
- (3) Population which is invested with the powers of the corporation through duly constituted officers and agents; and
- (4) Territory within which the local government exercises civil and corporate functions. [*MARTIN*]

B. NATURE AND FUNCTION

B.1. DUAL NATURE

Sec. 15, LGC. Every LGU created under this Code is a body politic and corporate. It shall exercise powers both as a political subdivision of the National Government, and as a corporate entity representing the inhabitants of its territory.

B.2. DUAL FUNCTIONS

Political/ Governmental	Corporate/ Proprietary
Exercised in the administration of powers of the state and for promotion of public welfare [<i>Torio v. Fontanilla</i> , G.R. No. L-29993 (1978)]	Exercised for the special benefit and advantage of the community [<i>Torio v. Fontanilla</i> (1978)]
Concern health, safety, advancement of public good and welfare as <i>affecting the public generally</i> [<i>Republic v. City of Davao</i> , G.R. No. ...]	Seek to obtain special corporate benefits or earn pecuniary profit [<i>Republic v. City of Davao</i> (2002)]

Political/ Governmental	Corporate/ Proprietary
148622 (2002)]	
Legislative, judicial, public, and political	Ministerial, private, and corporate
LGU acts as agent of the national government [<i>Republic v. City of Davao</i> (2002)]	LGU acts as agent of the community in administration of local affairs. [<i>Republic v. City of Davao</i> (2002)]
Examples: <ul style="list-style-type: none"> • Regulations against fire, disease; • Preservation of public peace; • Establishment of schools, public offices, etc. 	Examples: <ul style="list-style-type: none"> • Municipal waterworks, markets, wharves, fisheries; • Maintenance of parks, cemeteries, golf courses, etc.

C. REQUISITES FOR CREATION, CONVERSION, DIVISION, MERGER, OR DISSOLUTION

The territorial and political subdivisions are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras[...] [Sec. 1, Art. X, Constitution]

No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundaries substantially altered, except

[a]in accordance with the criteria established in the Local government code; and,

[b]subject to approval by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. [Sec. 10, Art. X, Constitution]

C.1. GENERAL REQUIREMENTS

- (1) Applicable to all LGUs
- (2) Law or Ordinance
- (3) Plebiscite
- (4) Election and Qualification of Elective Officials

i. Law or Ordinance

A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered EITHER:

- (1) **By law** enacted by Congress in the case of provinces, cities, municipalities, and any other political subdivision; OR
- (2) **By ordinance** passed by the Sangguniang Panlalawigan or Sangguniang Panlungsod in the case of a barangay within its territorial jurisdiction [Sec. 6, LGC].

N.B. In the case of the creation of barangays by the Sangguniang Panlalawigan, the **recommendation** of the Sangguniang Bayan concerned shall be necessary. [Sec. 385, LGC]

Power of creation is legislative in nature

- The authority to create municipal corporations is essentially legislative in nature. [*Pelaez v. Auditor General*, G.R. No. L-23825 (1965)]
- The enactment of a LGC is not a *sine qua non* for the creation of a municipality, and before the enactment of such, the power remains plenary except that creation should be approved in a plebiscite. [*Torralba v. Sibagat*, G.R. No. L-59180 (1987)]

To whom and what power may be delegated

- **To local legislative bodies:** "Under its plenary legislative powers, Congress

can delegate to *local legislative bodies* the power to create local government units, subject to reasonable standards and provided no conflict arises with any provision of the Constitution." [*Sema v. COMELEC*, G.R. No. 177597 (2008)]

N.B. Note that it has done so by delegating the power to create barangays.

- **Not to the President:** The power is inherently legislative, and to grant the President the power to create or abolish municipal corporations would allow him to exercise over LGUs the power of control denied to him by the Constitution. [*Pelaez v. Auditor General* (1965)]
- **Power to create provinces cannot be delegated:** Section 19, Article VI of RA 9054 is unconstitutional insofar as it grants to the ARMM Regional Assembly the power to create provinces and cities. Congress' delegation of the power to create a province includes the creation of a legislative district, which is unconstitutional, since legislative districts may be created or reapportioned only by an Act of Congress. [*Sema v. COMELEC* (2008)]

ii. Plebiscite

The plebiscite shall be conducted by the COMELEC within 120 days from the date of effectivity of the law or ordinance, unless said law or ordinance fixes another date. [Sec. 10, LGC]

The Constitution recognizes that the power to fix the date of elections is legislative in nature. But the Court upheld the COMELEC's broad power or authority to fix other dates for a plebiscite, as in special elections, to enable the people to exercise their right of suffrage. The COMELEC thus has residual power to conduct a plebiscite even beyond the deadline prescribed by law. [*Cagas v. COMELEC*, G.R. No. 209185 (2013)]

When a Plebiscite is Required: When an LGU is created, divided, merged, abolished, or its boundaries substantially altered [LGC, sec. 10]. This includes:

- (1) **Conversion** (e.g. from a city to a highly urbanized city) [Sec. 453, LGC; *see also Tobias v. Abalos*, G.R. No. 114783 (1994)]
- (2) **Downgrading** (e.g. from an independent component city to a component city) [*Miranda v. Aguirre*, G.R. No. 133064 (1999), on the downgrading of Santiago, Isabela]

When Plebiscite is NOT Required: There is no need for any plebiscite in the creation, dissolution or any other similar action on the following:

- (1) **Legislative Districts:** Legislative districts are not political subdivisions through which functions of the government are carried out. [*Bagabuyo v. COMELEC*, G.R. No. 176970 (2008)]
- (2) **Administrative Regions:** Administrative regions are not territorial and political subdivisions. The power to create and merge administrative regions is traditionally vested in the President. Hence, the merger of provinces that did not vote for inclusion in the ARMM into existing administrative regions does not require a plebiscite. [See *Abbas v. COMELEC*, G.R. No. 89651 (1989)]

Plebiscite must be “in the political units directly affected”

- **Meaning:** When the law states that the plebiscite shall be conducted “in the political units directly affected,” it means that the residents of the political entity who would be economically dislocated by the separation of a portion thereof have the right to vote in said plebiscite. [*Padilla v. COMELEC*, G.R. No. 103328 (1992)]

- **“Material change” as standard:** If the creation, division, merger, abolition or substantial alteration of boundaries of an LGU will cause a material change in the political and economic rights of a political unit, the residents of such political unit should have the right to participate in the required plebiscite. [*Miranda v. Aguirre* (1999)]
- Hence, in the conversion of a component city to a highly urbanized city, the residents of the province must participate. The conversion of the city will, among others, result in reduction in taxing jurisdiction and reduced economic viability of the province. [*Umali v. COMELEC*, G.R. No. 203974 (2014)]
- But the inhabitants of a neighboring city (e.g. San Juan) are properly excluded from a plebiscite concerning the conversion of a city (e.g. Mandaluyong) to a highly urbanized city. [See *Tobias v. Abalos* (1994)]

Plebiscite Requirement for Autonomous Regions

The creation of the autonomous region shall be effective when approved by a majority of the votes cast by the constituent units in a plebiscite called for the purpose. However, only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region. [Sec. 18, Art. X, Constitution]

Majority requirement: What is required by the Constitution is a *simple majority* of votes approving the Organic Act in *individual constituent units*.

- A double majority [in (1) all constituent units put together, (2) as well as in the individual constituent units] is not required. [*Abbas v. COMELEC* (1989)]

Sole province cannot validly constitute an autonomous region: An autonomous region cannot be created if only one province approved of its creation in the plebiscite called for the purpose [*Ordillo v. COMELEC*, G.R. No. 93054 (1990), on the plebiscite concerning the Cordilleras].

Not all amendments require plebiscite: Only amendments to, or revisions of, the Organic Act *constitutionally essential to the creation of autonomous regions*—those aspects specifically mentioned in the Constitution which Congress must provide for in the Organic Act—require ratification through a plebiscite.

Rationale: If all amendments to the Organic Act have to undergo the plebiscite requirement before becoming effective, this would hamper the ARMM's progress by impeding Congress from enacting laws that timely address problems as they arise in the region, as well as weighing down the ARMM government with the costs that unavoidably follow the holding of a plebiscite. [*Abas Kida v. Senate of the Phil*, G.R. No. 196271 (2011)]

iii. Beginning of Corporate Existence

General Rule: The corporate existence of an LGU commences upon the election and qualification of its chief executive and a majority of the members of its sanggunian.

Exception: Unless some other time is fixed therefor by the law or ordinance creating it. [Sec. 14, LGC]

C.2. SPECIFIC REQUIREMENTS

Verifiable Indicators of Viability (Summary)

General rule: all requirements are minimum

	Income	Popula- tion	Land Area
N.B.	Average annual income for the last 2 consecutive years	Total number of inhabitants within LGU's territory	Generally, must be contiguous
Compliance attested by:	Dept. of Finance	National Statistics Office	Lands Management Bureau
Province [Sec. 461, LGC]	P20M (1991 prices)	250,000	2,000 sq. km.
Highly Urbanized City [Sec. 452]	P50M (1991 prices)	200,000	100 sq. km.
Component City [Sec. 450, as amended by R.A. No. 9009]	P100M (2000 prices)	150,000	100 sq. km.
Municipality [Sec. 442]	P2.5M (1991 prices)	25,000	50 sq. km.
Barangay [Sec. 386]	No requirement	2,000; OR 5,000 (if in Metro Manila or HUCs)	No requirement except for contiguity

Which requirements must be satisfied

Province or City	(1) Income; AND (2) EITHER population OR land area
Municipality	(1) Income; (2) Population; AND (3) Land Area
Barangay	(1) Population; AND (2) Territorial contiguity

- The creation of an LGU or its conversion from one level to another level shall be based on verifiable indicators of viability

and projected capacity to provide services. [Sec. 7, LGC]

i. Income

Income must be sufficient to provide for all essential government facilities and services and special functions commensurate with the size of its population. [Sec. 7, LGC]

What is included in average annual income: *Income accruing to the general fund*, exclusive of special funds, transfers, and non-recurring income. [Sec. 442, 450, 461, LGC]

- The internal revenue allotment (IRA) forms part of the income of the LGU. The funds generated from local taxes, IRA, and national wealth utilization proceeds accrue to the general fund of the LGU. [Alvarez v. Guingona, G.R. No. 118303 (1996)]
- **Exception:** Component cities created under R.A. 9009, which mandates that the income requirement be satisfied through “locally generated” revenue of at least P100M.

ii. Population

Total number of *inhabitants* within the territorial jurisdiction of the local government unit. [Sec. 7, LGC]

iii. Land Area (Territory)

Land area must be

- (1) Contiguous, unless it comprises of two or more islands or is separated by an LGU independent of the others;
- (2) Properly identified by metes and bounds with technical descriptions; and,
- (3) Sufficient to provide for such basic services and facilities to meet the requirements of its populace. [Sec. 7, LGC]

Land Area (Territory) requirements, exceptions:

	<i>Need not follow land area</i>	<i>Need not be contiguous</i>
<i>Province</i>	<p>Under the LGC: No exception.</p> <p>Under the LGC IRR: Composed of 1 or more islands [Art. 9(2), LGC IRR; held valid in <i>Navarro v. Ermita</i>, G.R. No. 180050 (2011)]</p>	<p>(a) Composed of 2 or more islands; or</p> <p>(b) Separated by cities which do not contribute to the income of the province [Sec. 461(b) LGC]</p>
<i>City</i>	Composed of 1 or more islands [Sec. 450(b), LGC]	Composed of 2 or more islands [Sec. 450(b), LGC]
<i>Municipality</i>	Composed of 1 or more islands [Sec. 442(a), LGC]	Composed of 2 or more islands [Sec. 442(b), LGC]
<i>Barangay</i>	[No requirement]	Composed of 2 or more islands [Sec. 386(b), LGC]

C.3. OTHER LGUS

i. Special Metropolitan Political Subdivisions

- Created by Congress, *subject to a plebiscite*
- Component cities/municipalities retain their basic autonomy and are entitled to their own local executive and legislative assemblies.
- The jurisdiction of the metropolitan authority that will be created shall be limited to basic services requiring coordination. [Sec. 11, Art. X, Constitution]

N.B. The MMDA is not an LGU, much less a special metropolitan political subdivision. "The MMDA is a 'development authority' which is a 'national agency, not a political government unit.'" [*MMDA v. Bel-Air* (2000)]

- The scope of the MMDA's function is limited to the delivery of [7 basic services enumerated in its charter.] It is not vested with police power, let alone legislative power. *All its functions are administrative in nature.* [*MMDA v. Bel-Air*, G.R. No. 135962 (2000)]

ii. Highly Urbanized Cities and Independent Component Cities

Highly Urbanized Cities and Independent Component Cities shall be independent of the Province. [Sec. 12, Art. X, Constitution]

- **Independent Component Cities** are those whose charters *prohibit their voters from voting for provincial elective officials.* are independent of the province. [Sec. 451, LGC]
- **Highly Urbanized Cities** are those that meet the higher population threshold for cities in the LGC [see Sec. 452(a), LGC].

iii. Autonomous Regions

- Consist of provinces, cities, and municipalities and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of the Constitution;
- The President exercises general supervision over such region;
- All powers and responsibilities not granted to it by law or the Constitution shall be vested in the National Government;
- Created via organic act for each autonomous region, with participation

of the regional consultative commission. The **organic act**:

- (1) Defines the basic structure of government for the region consisting of the executive department and legislative assemblies, both of which shall be *elective* and *representative* of the constituent political units; and,
- (2) Provides for special courts with personal, family, and property law jurisdiction. [Sec. 15-18, Art. X, Constitution]

iv. De Facto Corporations – Formed when there is defect in the creation of a municipal corporation but its legal existence has been recognized and acquiesced publicly and officially.

Requisites:

- (1) Apparently valid law under which the corporation may be formed;
- (2) Attempt in good faith to organize the corporation;
- (3) Colorable compliance with law; and
- (4) Assumption of corporate powers. [*Municipality of Malabang v. Benito*, G.R. No. L-28113 (1969)]

Effect of Being Classified as a De Facto Corporation

Collateral attacks are not allowed. The action to attack its personality is reserved to the state in a proceeding for quo warranto or any other direct proceeding. The proceeding must be:

- (1) Brought in the name of the Republic of the Philippines
- (2) Commenced by the Solicitor General or the fiscal when directed by the President
- (3) Timely raised [*Municipality of San Narciso v. Mendez*, G.R. No. 103702 (1994)]

LGC's Conversion of De Facto Corporations to De Jure

Municipal districts which were organized pursuant to presidential issuances or executive orders and which have their respective set of elective municipal officials holding office at the time of the effectivity of the LGC are considered as *regular* municipalities. [Sec. 442(d), LGC]

v. Sub-provinces

Existing sub-provinces are hereby converted into regular provinces upon approval by a majority of the votes cast in a plebiscite to be held in the said subprovinces and the original provinces directly affected[.] [Sec. 462, LGC]

C.4. OTHER MATERIAL CHANGES

i. Division and Merger

Requirements: Division and merger shall comply with the same requirements prescribed for the creation of an LGU. [Sec. 8, LGC]

Limitations:

- Division shall not reduce the income, population, or land area of the LGU or LGUs concerned to less than the minimum requirements prescribed;
- The income classification of the original LGU or LGUs shall not fall below its current classification prior to the division [Sec. 8, LGC]

Effects of Division and Merger:

- Under the old REV. ADM. CODE, the effect of division and merger are determined by the law effecting such. [Sec. 68] There is no equivalent provision in either the ADM. CODE (1987), the LGC, or the LGC IRR.
- The following effects are taken from common law. [MARTIN]

<i>Effects of Merger</i>	<i>Effects of Division</i>
Legal existence and right of office of the annexed LGU are terminated.	The legal existence of the original LGU is extinguished.
Ordinances of the annexing LGU shall prevail	[Silent]
Title to property is acquired and debts are assumed by the annexing LGU.	Successor LGUs acquire property, rights, powers, and obligations falling within their respective territorial limits.

ii. Abolition

Ground: An LGU may be abolished when its income, population, or land area has been *irreversibly reduced to less than the minimum standards* prescribed for its creation as certified by the national agencies concerned to the Congress or the sanggunian. [Sec. 9, LGC]

Resulting merger: The law or ordinance abolishing an LGU shall specify the province, city, municipality, or barangay with which the LGU sought to be abolished will be incorporated or merged. [Sec. 9, LGC]

The fact that nobody resides in an LGU does not result in its automatic cessation. The Congress or the sanggunian concerned must pass a law or an ordinance for the abolition of such LGU, subject to the mandatory requirement of a plebiscite. [*Sultan Usman Sarangani v. COMELEC*, G.R. No. 135927 (2000)]

Dissolution does not occur due to:

- (1) Non-user or surrender of charter;
- (2) Failure to elect municipal officers;
- (3) Change of sovereignty; or
- (4) Change of name or boundaries.[MARTIN]

iii. Downgrading

Downgrading falls within the meaning of creation, division, merger, abolition, or substantial alteration; hence ratification in a plebiscite is necessary. There is a material change in the political and economic rights of the LGU's inhabitants as well as its budget, and thus reasonable to require the consent of the affected population. The effects of downgrading from independent component city to component city are:

- (1) The city mayor will be placed under the administrative supervision of the Governor;
- (2) Resolutions and ordinances passed by the City Council will have to be reviewed by the Provincial Board; and,
- (3) Taxes will have to be shared with the province. [*Miranda v. Aguirre* (1999)]

III. Principles of Local Autonomy

A. LOCAL AUTONOMY

The territorial and political subdivisions shall enjoy local autonomy. [Sec. 2, Art. X, Constitution]

A.1. DECLARATION OF POLICY

- (1) The territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals.
- (2) The State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources.
- (3) The State shall ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum.
- (4) All national agencies are required to conduct periodic consultations with the appropriate LGUs, NGOs, people's organizations and other concerned sectors before any project or program is implemented in their respective jurisdictions. [Sec. 2, LGC]

Congressional Pork Barrel goes against the constitutional principles on local autonomy since it allows district representatives, who are national officers, to substitute their judgments in utilizing public funds for local development. [*Belgica v. Ochoa*, G.R. No. 208566 (2013)]

B. DECENTRALIZATION V. DEVOLUTION

Decentralization refers to either (1) decentralization of administration or to (2) decentralization of power.

Decentralization of Administration	Decentralization of Power
Occurs when the central government delegates administrative powers to political subdivisions in order to make it more responsive. [<i>Limbona v. Mangellin</i> , G.R. No. 80391 (1989)]	Abdication of political power in favor of LGUs declared to be autonomous regions, making the latter no longer accountable to the national government, but to its constituency. [<i>Ganzon v. CA</i> , G.R. No. 93252 (1991)]

Devolution is the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities [Sec. 17, LGC]

- The principle of local autonomy under the 1987 Constitution simply means decentralization. [*Basco v. PAGCOR* (1991)]
- N.B. *Basco* was decided prior to the LGC. *Basco* holds that the Constitution guarantees decentralization, but says nothing which precludes *devolution*. The Court later recognized that “the centerpiece of LGC is the system of decentralization[.] Indispensable thereto is *devolution* and the LGC expressly provides that ‘[a]ny provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit.’” [*Tano v.*

Socrates, G.R. No. 110249 (1997), citing Sec. 5(a), LGC]

- Also, note that the Constitution provides for *political autonomy* (and not merely administrative autonomy) for *autonomous regions*. [*Cordillera Broad Coalition v. COA*, G.R. No. 79956 (1990)]

C. GENERAL SUPERVISION OVER LOCAL GOVERNMENTS

C.1 PRESIDENT’S POWER OF SUPERVISION

The President of the Philippines shall exercise *general supervision* over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions. [Sec. 4, Art. X, Constitution]

Supervision v. Control [*Pimentel v. Aguirre*, G.R. No. 132988 (2000)]

Power of Supervision	Power of Control
Overseeing; the power or authority of an officer to see that subordinate officers perform their duties	Power of an officer to alter or modify or nullify or set aside what a subordinate officer has done in the performance of his duties
If subordinate fails, superior may take such action or step as prescribed by law to make them perform their duties.	If subordinate fails, superior may substitute the judgment of the latter for that of the former.
Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their	Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to

discretion, order the act undone or redone by their subordinates or even decide to do it themselves.	modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act.
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- The Constitution confines the President's power over local governments to one of general supervision.

D. LOCAL FISCAL AUTONOMY

Under existing laws, LGUs enjoy not only administrative autonomy, but also **local fiscal autonomy**.

- This means that LGUs have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.
- It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. [*Pimentel v. Aguirre* (2000)]

D.1. SOURCES OF LGU FUNDS

- (1) Taxes, fees, and charges which accrue exclusively for their use and disposition
- (2) Just share in national taxes which shall be automatically and directly released to them
- (3) Equitable share in the proceeds from utilization and development of national wealth and resources within their territorial jurisdiction [Sec. 18, LGC]

D.2. INTERNAL REVENUE ALLOTMENTS

Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them. [Sec. 6, Art. X, Constitution]

General Rule: LGUs shall have a **40%** share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year. [Sec. 284(c), LGC]

Exception: When the national government incurs an unmanageable public sector deficit, the President authorized to reduce the allotment to **30%**. [Sec. 284, par. 2, LGC].

Requisites for Exception:

- (1) Unmanageable public sector deficit;
- (2) Recommendation of the Secretaries of (a) Finance, (b) Internal and Local Gov't, and (c) Budget and Management; and
- (3) Consultation with (a) heads of both houses of Congress, and (b) presidents of the liga. [Sec. 284, par. 2, LGC]

Automatic Release: The share of each LGU shall be released, without need of any further action, directly to the respective treasurer on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose. [Sec. 286(a), LGC]

- Hence, sec. 4 of A.O. 372, withholding 10% of the LGUs' IRA "pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation" is invalid and unconstitutional. The "temporary" nature of the retention by the national government does not matter. Any retention is prohibited. [*Pimentel v. Aguirre* (2000)]

- Since under Sec. 6, Art X of the Constitution, only the just share of local governments is qualified by the words "as determined by law," and not the release thereof, the plain implication is that Congress is not authorized by the Constitution to hinder or impede the automatic release of the IRA. [*ACORD v. Zamora*, G.R. No. 144256 (2005)]

E. CONSULTATIONS

No project or program shall be implemented by government authorities unless the consultations in Secs. 2(c) and 26 hereof are complied with, *and* prior approval of the sanggunian concerned is obtained [Sec. 27, LGC]

- All national agencies are required to conduct periodic consultations with appropriate LGUs, NGOs, people's organizations and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions. [Sec. 2(c), LGC]
- It shall be the duty of every national agency or GOCC authorizing or involved in the planning and implementation of any project or program *that may cause* pollution, climactic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the LGUs, NGOs, and other sectors concerned and explain:
 - The goals and objectives of the project or program;
 - Its impact upon the people and the community in terms of environmental or ecological balance; and
 - Measures that will be undertaken to prevent or minimize the adverse effects thereof. [Sec. 26, LGC]
- Provided that occupants in areas where such projects are to be implemented shall not be evicted unless

appropriation relocation sites have been provided, in accordance with the provisions of the Constitution. [Sec. 27, LGC]

As to the SSEZ: Consultations are not required when the very law unambiguously provides that the LGUs do not retain their basic autonomy and identity when it comes to matters specified by the law as falling under the powers, functions and prerogatives of the SBMA. Under R.A. No. 7227, the power to approve or disapprove projects within the SSEZ is one such power over which the SBMA's authority prevails over the LGU's authority. [*Paje v. Casiño*, G.R. No. 207257 (2015)]

IV. Powers Of Local Government Units

Sources of Power:

- (1) 1987 Constitution
- (2) Local Government Code and special laws
- (3) Charter

A. POLICE POWER (GENERAL WELFARE CLAUSE)

Four Categories of Powers Exercised by LGUs:

- (1) Powers expressly granted
- (2) Powers necessarily implied therefrom
- (3) Powers necessary, appropriate, or incidental for efficient and effective governance
- (4) Powers essential to the promotion of the general welfare [Sec. 16, LGC]

Within their respective territorial jurisdictions, LGUs shall ensure and support:

- (a) Preservation and enrichment of culture
- (b) Promotion of health and safety
- (c) Enhancement of the right of the people to a balanced ecology
- (d) Development of self-reliant scientific and technological capabilities
- (e) Improvement of public morals
- (f) Enhancement of economic prosperity and social justice
- (g) Promotion of full employment among residents
- (h) Maintenance of peace and order

- (i) Preservation of the comfort and convenience of its inhabitants [Sec. 16, LGC]

Nature

The police power of a municipal corporation extends to all great public needs, and includes all legislation and functions of the municipal government. The drift is towards social welfare legislation geared towards state policies to provide adequate social services, the promotion of general welfare, and social justice. [*Binay v. Domingo*, G.R. No. 92389 (1991)]

Two Branches of General Welfare Clause

- (1) **General legislative power** – Authorizes municipal councils to enact ordinances and make regulations not repugnant to law and may be necessary to carry into effect and discharge the powers and duties conferred upon it by law
- (2) **Police power proper** – Authorizes the municipality to enact ordinances as may be proper and necessary for the health and safety, prosperity, morals, peace, good order, comfort and convenience of the municipality and its inhabitant, and for the protection of their property [*Fernando v. St. Scholastica's College*, G.R. No. 161107 (2013)]

Limitations

- (1) The General Welfare clause cannot be used to justify an act not authorized by law.
 - (2) The exercise must pass the test of a valid ordinance [*Rural Bank of Makati v. Municipality of Makati*, G.R. No. 150763 (2004)].
- The principle that the general welfare clause authorizes the abatement of nuisances without judicial proceedings

applies only to nuisances *per se*, or those which affect the immediate safety of persons and property. [*Tayaban v. People*, G.R. No. 150194 (2007)]

Illustrations –Police Power Applied

- (1) Prescribing zoning and classification of merchandise sold in the public market;
- (2) Condemnation and demolition of buildings found to be in dangerous or ruinous condition;
- (3) Regulation of operation of tricycles;
- (4) Zoning regulations [*Patalinghug v. CA*, G.R. No. 104786 (1994)];
- (5) Providing burial assistance to the poor [*Binay v. Domingo*, G.R. No. 92389 (1991)];
- (6) Enforcement of fishery laws within LGU waters [*Tano v. Socrates*, G.R. No. 110249 (1997)]

Illustrations –Invalid Exercise of Police Power

- (1) Prohibition of operation of night clubs, as it is a lawful trade or pursuit of occupation [*Dela Cruz v. Paras*, G.R. No. L-42571-72 (1983)];
- (2) Rescinding of mayor's permits based on arbitrary grounds [*Greater Balanga Dev't Corp. v. Mun. of Balanga*, G.R. No. 83987 (1994)].

B. EMINENT DOMAIN

It is government's right to appropriate, in the nature of a compulsory sale to the State, private property for public use or purpose. Inherently possessed by the national legislature, the power of eminent domain *may be validly delegated to local governments*, other public entities and public utilities. [*Moday v. CA*, G.R. No. 107916 (1993)]

Requisites for the Exercise of Eminent Domain by an LGU

- (1) An ordinance [not a mere resolution] is enacted by the local legislative council authorizing the local Chief Executive to exercise the power of eminent domain;
- (2) The power is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless;
- (3) There is payment of just compensation based on the fair market value of the property at the time of taking; and
- (4) A valid and definite offer was previously made to the owner of the property, but the offer was not accepted.[*Heirs of Suguitan v. City of Mandaluyong*, G.R. No. 135087 (2000)]

Jurisdiction

An expropriation suit falls under the jurisdiction of the RTCs. The subject of an expropriation suit is the government's exercise of eminent domain, a matter that is incapable of pecuniary estimation. [*Barangay San Roque v. Heirs of Pastor*, G.R. No. 138896 (2000)]

Just Compensation

- The determination of “just compensation” in eminent domain cases is a judicial function. Hence, a statutory provision on a fixed formula in the computation of just compensation in cases of acquisition of easements of right of way is not binding upon the Court. [*National Power Corp. v. Ileta*, G.R. No. 169957 (2012)]
- Just compensation is determined as of the time of actual taking [Sec. 19, LGC]

Requisites for the Immediate Entry by the LGU

- (1) Filing of the complaint for expropriation sufficient in form and substance; and
- (2) Deposit of an amount equivalent to 15% of the fair market value of the property to be expropriated based on the current tax declaration [Sec. 19, LGC]

Upon compliance with the requisites, the issuance of a writ of possession becomes ministerial. There is no need for a hearing for the writ to issue. [*City of Iloilo v. Legaspi*, G.R. No. 154614 (2004)]

Returning the Property

When private land is expropriated for a particular public use and that purpose is abandoned, there is no “implied contract” that the properties will be used only for the public purpose for which they were acquired. Property is to be returned only when it is expropriated with the condition that when said purpose is ended or abandoned, the former owner reacquires the property so expropriated, and not when the expropriation decree gives to the entity a fee simple which makes the land the expropriator the absolute owner of the property. [*Air Transportation Office v. Gopuco*, G.R. No. 158563 (2005)]

Socialized Housing [R.A. No. 7279]

Under the Urban Development and Housing Act, expropriation by an LGU for purposes of urban land reform and housing shall occur only as a last resort. It must be shown by the LGU that other methods of acquisition (community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint venture agreements, and negotiated purchase) have been exhausted [Sec. 10].

If all the other methods have been exhausted and expropriation to continue, the LGU shall acquire lands for socialized housing in the following order:

- (1) Government lands
- (2) Alienable lands of the public domain
- (3) Unregistered or abandoned and idle lands
- (4) Lands within Areas for Priority Development
- (5) Unacquired BLISS sites
- (6) Private lands [Sec. 9]

Furthermore, lands of small-property owners are exempt from expropriation for purposes of socialized housing. “Small-property owners” are defined by two elements:

- (1) They are owners of real property which consists of residential lands with an area of not more than 300 sq. meters in highly urbanized cities, and 800 sq. meters in other urban cities; and
- (2) They do not own real property other than the same. [Sec. 3(q)]

C. TAXING POWER

Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to limitations as Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. [Sec. 5, Art. X, Constitution]

C.1. FUNDAMENTAL PRINCIPLES ON TAXATION BY AN LGU

- (1) Taxation shall be uniform;
- (2) Taxes, fees, and charges:
 - (a) Shall be equitable and based as far as practicable on the taxpayer's ability to pay;
 - (b) Shall be levied and collected only for a public purpose;
 - (c) Shall not be unjust, excessive, oppressive, or confiscatory; and
 - (d) Shall not be contrary to law, public policy, national economic policy, or in restraint of trade;
- (3) Collection shall in no case be left to any private person;
- (4) Revenue shall inure solely to the benefit of the levying LGU, unless otherwise specified; and

(5) Each LGU shall, as far as practicable, evolve a progressive system of taxation [Sec. 130, LGC]

C.2. WITHDRAWAL OF LOCAL TAX EXEMPTION PRIVILEGES

Unless otherwise provided in the LGC, tax exemptions or incentives granted to, or enjoyed by all persons, whether natural or juridical, *including government-owned or -controlled corporations* were withdrawn upon the effectivity of the LGC. [Sec. 193, LGC]

Privileges Retained: Tax exemption privileges of the following were not withdrawn by the LGC:

- (1) Local water districts;
- (2) Cooperatives duly registered under R.A. No. 6938; and
- (3) Non-stock and non-profit hospitals and educational institutions [Sec. 193, LGC; Sec. 234, LGC]

C.3. REAL PROPERTY TAXATION

Annual *ad valorem* tax on real property may be levied by a:

- (1) Province; or
- (2) City; or
- (3) Municipality within Metropolitan Manila Area [Sec. 232, LGC]

Exemptions from Real Property Tax

The following are exempted from payment of the real property tax:

- (a) Real property owned by the Republic of the Philippines or any of its political subdivisions
EXCEPT when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;
- (b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious

cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

- (c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;
- (d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and
- (e) Machinery and equipment used for pollution control and environmental protection [Sec. 234, LGC]

C.4. OTHER LIMITATIONS ON TAXING POWERS OF LGUS

- **Taxes already imposed by National Government:** *Generally*, LGUs cannot impose taxes that are already imposed by the National Government (e.g. income tax, documentary stamps, estate taxes, customs duties, excise taxes under the NIRC, VAT) [See *generally*, Sec. 133, LGC]
- **Persons exempted:** LGUs cannot impose taxes, fees, and charges on (a) countryside and barangay business enterprises; (b) cooperatives duly registered under the Cooperative Code; and National Government, its agencies and instrumentalities, and local government units. [Sec. 133(n)-(o), LGC]
 - An instrumentality of the State or National Government is exempt from local taxation. [Sec. 133(o), LGC] Hence, the Manila International Airport Authority, being such an instrumentality and *not* being an GOCC, is exempt from local taxation. [*MIAA v. CA*, G.R. No. 155650 (2006)]

- However, GOCCs are [generally] *not* exempt from local taxation. [*MIAA v. CA* (2006)]

D. RECLASSIFICATION OF LANDS

Requisites for Reclassification

- (1) Via ordinance;
- (2) After public hearings for the purpose;
- (3) Limited to the following percentages:
 - a) 15% for highly urbanized and independent component cities
 - b) 10% for component cities and 1st to 3rd class municipalities
 - c) 5% for 4th to 6th class municipalities
 - **Exception:** The President may, when public interest requires and upon recommendation by the NEDA, authorize reclassification in excess of the limits set herein
- (4) Grounds:
 - a) Land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture; and
 - b) Land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the Sanggunian concerned. [Sec. 20, LGC]
 - **Approval by national agency:** Where approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application for reclassification within 3 months from receipt shall be deemed an approval thereof. [Sec. 20(d), LGC]
 - **Comprehensive Agrarian Reform Law:** Nothing in this Section shall be construed as repealing, amending, or

modifying in any manner the provisions of R.A. No. 6657. [Sec. 20(e), LGC]

- **Distinguished from Conversion:** The power granted to local governments is not the power to convert land, but the power to reclassify land.
 - **Conversion** is the act of *changing* the current use of a piece of agricultural land into some other use *as approved* by the Department of Agrarian Reform
 - **Reclassification** is the act of *specifying* how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, *as embodied* in the land use plan, subject to the requirements and procedure for land use conversion. [*Buklod ng Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.*, G.R. No. 131481 (2011)]
 - The reclassification of agricultural land does not automatically allow a landowner to change its use. The landowner has to undergo the process of conversion before she is permitted to use the agricultural land for other purposes. [*Chamber of Real Estate and Builders Association, Inc. v. Secretary of Agrarian Reform*, G.R. No. 183409 (2010)]

E. CLOSURE AND OPENING OF ROADS

Scope of LGU's power to close [Sec. 21, LGC]

<i>Road, alley, park or square is</i>	
<i>National</i>	<i>Local</i>
Temporary closure only.	(1) Temporary; or (2) Permanent closure.

Requisites for Temporary Closure

- (1) Via ordinance;
 - (2) May be done due to:
 - a) Actual emergency;
 - b) Fiesta celebrations;
 - c) Public rallies;
 - d) Agricultural or industrial fairs; or
 - e) Undertaking of public works and highways, telecommunications, and waterworks projects;
 - (3) Duration of closure must be specified by the by the local chief executive in a written order; and
 - (4) *If* for the purpose of athletic, cultural, or civil activities, these must be officially sponsored, recognized, or approved by the local government. [Sec. 21, LGC]
- **Note:** A City, Municipality, or Barangay may also temporarily close and regulate the use of any *local* street, road, thoroughfare or any other public place where shopping malls, Sunday, flea or night markets, or shopping areas may be established for the general public. [Sec. 21(d)]

Requisites for Permanent Closure

- (1) Via ordinance approved by at least 2/3 of all members of the Sanggunian;
 - (2) When necessary, an adequate substitute for the public facility that is subject to closure should be provided;
 - (3) Such ordinance must have provisions for the maintenance of public safety therein; and
 - (4) If a freedom park is permanently closed, there must be a provision for its transfer or relocation to a new site. [Sec. 21(a),(b)]
- Such property permanently withdrawn from public use may be used or conveyed for any purpose for which other real property belonging to the

LGU may be lawfully used or conveyed. [Sec. 21(b)]

Public Roads are Outside the Commerce of Man

A public road may not be the subject of lease or contract, as public roads are properties for public use outside the commerce of man. [*Dacanay v. Asistio*, G.R. No. 93654 (1992)]

- As long as a property owner has reasonable access to the general system of streets, he has no right to compensation for the closure of a public street. The Constitution does not undertake to guarantee to a property owner the public maintenance of the most convenient route to his door. [*Cabrera v. CA*, G.R. No. 78573 (1991)]

F. LEGISLATIVE POWER

F.1. WHO MAY EXERCISE

Local legislative power shall be exercised by the:

- (1) Sangguniang panlalawigan for the province;
- (2) Sangguniang panlungsod for the city;
- (3) Sangguniang bayan for the municipality; and
- (4) Sangguniang barangay for the barangay [Sec. 48, LGC]

F.2. ORDINANCE V. RESOLUTION

[*Garcia v. COMELEC*, G.R. No. 111230 (1994)]

<i>Ordinance</i>	<i>Resolution</i>
Considered as law	Mere declaration of the opinion of the lawmaking body
On matters applying to persons or things in general	On a specific matter

<i>Ordinance</i>	<i>Resolution</i>
Intended to permanently direct and control	Temporary in nature
A third reading is necessary	A third reading is not necessary unless decided otherwise by a majority of all the sanggunian members

F.3. PRESIDING OFFICER

<i>Legislative Body</i>	<i>Presiding Officer</i>
Sangguniang Panlalawigan	Vice-Governor
Sangguniang Panlungsod	Vice-Mayor
Sangguniang Bayan	Vice-Mayor
Sangguniang Barangay	Punong Barangay

- The presiding officer shall vote only to break a tie.
- A temporary presiding officer shall be elected from and by the members present and constituting a quorum, in the event of the inability of the regular presiding officer to preside at a session. The temporary presiding officer shall certify within 10 days from the passage of ordinances enacted and resolutions adopted by the sanggunian in the session over which he temporarily presided. [Sec. 49, LGC]
- **Non-membership of Acting Governor:** A Vice-Governor who is concurrently an Acting Governor is actually a quasi-Governor. He is deemed a non-member of the sanggunian for the time being and so cannot preside over its sessions. The procedure for the election of a temporary presiding officer in case of inability of the regular presiding officer shall apply in such case. [Gamboa v. Aguirre, G.R. No. 134213 (1999)]

F.4. INTERNAL RULES OF PROCEDURE

On the first regular session following the election of its members and within 90 days thereafter, the sanggunian shall adopt or update its existing rules of procedure. [Sec. 50, LGC]

- On the first regular session the sanggunian concerned shall adopt or update its existing rules of procedure. LGC, sec. 50 does *not* mandate that no other business may be transacted on the first regular session. [Malonzo v. Zamora, G.R. No. 137718 (1999)]
- The rules of procedure shall provide for:
 - (1) Organization of the Sanggunian and the election of its officers
 - (2) Creation of Standing Committees
 - (3) Order and calendar of business for each session
 - (4) The legislative process [c.f. special procedures under Secs. 186-188, 511 for tax ordinances and ordinances with penal sanctions]
 - (5) Parliamentary procedures
 - (6) Disciplinary rules for members for disorderly behavior and absences without justifiable cause for 4 consecutive sessions
- The penalties which the sanggunian may impose are: (1) censure, (2) reprimand, (3) exclusion from the session, (4) suspension for not more than 60 days, and (5) expulsion.
 - The penalty of suspension or expulsion requires the concurrence of at least 2/3 of all the sanggunian members.
 - A member convicted by final judgment to imprisonment of at least 1 year for a crime involving moral turpitude shall be automatically expelled from the sanggunian. [Sec. 50, LGC]

F.5. QUORUM

The presence of a quorum is required to transact official business. A majority of all members of the Sanggunian who have been elected *and* qualified shall constitute a quorum. [Sec. 53, LGC]

- The presence of the presiding officer is considered in determining the presence of a quorum since a presiding officer is considered a "member" of the sanggunian. [*La Carlota City v. Rojo*, G.R. No. 181367 (2012)]
- Quorum shall be based on the total number of members elected *and* qualified. The filing of a leave of absence does not affect a member's election to, and qualification as member of, a local legislative body. [*Zamora v. Caballero*, G.R. No. 147767 (2004)]

General rule: A majority of the members present, there being a quorum is required for the valid enactment of an ordinance or resolution [Art. 107(g), LGC IRR]

Exception: When otherwise provided by the LGC (*e.g.* any ordinance or resolution authorizing or directing the payment of money or creating a liability requires the approval of the majority of all the sanggunian members). [Rule VII, Sec. 14 (g), LGC IRR]

It is legally permissible for the sanggunian to provide for a higher voting requirement for the enactment or amendment of a particular ordinance. [*Casiño v. CA*, G.R. No. 91192 (1991)]

When there is no quorum:

- The presiding officer may declare a recess until such time as a quorum is constituted.
- A majority of the members present may also adjourn from day to day and may compel the attendance of any member absent without justifiable cause by designating a member of the

sanggunian to arrest the absent member and present him at the session.

- The member designated shall be assisted by a member or members of the police force in the territorial jurisdiction of the LGU concerned.
- If there is still no quorum, no business shall be transacted. The presiding officer, upon proper motion duly approved by the members present, shall then declare the session adjourned for lack of quorum. [Sec. 53, LGC]

F.6. SANGGUNIAN SESSIONS

- First session following the election, the Sanggunian shall, by resolution, fix the day, time, and place of its regular sessions.
- Minimum Number of Regular Sessions:
 - Sangguniang Panlalawigan, Panlungsod, and Bayan: Once a week
 - Sangguniang Barangay: Twice a month
- *Public sessions:* All sessions shall be open to the public.
 - **Exception:** Closed-door session is ordered by majority of the members present, there being a quorum, in the public interest or for reasons of security, decency or morality.
- No two sessions, regular or special, may be held in a single day.

F.7 SPECIAL SESSIONS

- May be called by the local chief executive or by majority of the Sanggunian.
- Written notice to the members shall be served personally at their usual place of residence at least 24 hours before the special session is held.

- No other matters may be considered except those stated in the notice unless otherwise concurred in by 2/3 vote of those present, there being a quorum.

F.8. NO SUBPOENA AND CONTEMPT POWERS

Local legislative bodies do not have the power to subpoena witnesses and the power to punish non-members for contempt. They may only invite resource persons who are willing to supply information which may be relevant to the proposed ordinance. [*Negros Oriental II Electric Cooperative, Inc. v. Sangguniang Panlungsod of Dumaguete*, G.R. No. L-72492 (1987)]

F.9. APPROVAL AND VETO OF ORDINANCES

i. Approval: Local chief executive shall affix his signature on each and every page of the ordinance. [Sec. 54, LGC]

- The signature of the local chief executive in the approval of an ordinance or resolution is not a mere ministerial act, as it requires the exercise of analysis and judgment. This is part of the legislative process. [*De Los Reyes v. Sandiganbayan*, G.R. No. 121215 (1997)]

ii. Disapproval (Veto): The local chief executive shall veto the ordinance, stating his reasons in writing. [Sec. 55, LGC]

- **Grounds:** Under the LGC, only two grounds:
 - (1) Ultra vires; or
 - (2) Prejudicial to public welfare, stating his reasons in writing.
- The local chief executive may veto an ordinance or resolution only once.
- **Periods:** The ordinance is returned with objections to the Sanggunian within 15 days in the case of Sangguniang Panlalawigan, or within

10 days in the case of Sangguniang Panlungsod/Bayan; otherwise, the ordinance shall be deemed approved.

- **Override:** The veto may be overridden by the Sanggunian upon a 2/3 vote of all its members.
- The punong barangay signs the ordinances enacted by the sangguniang barangay upon their approval. [Sec. 54(c)].

N.B. **No veto for barangays:** The veto power cannot be exercised by the punong barangay (since he is a member of the sangguniang barangay).
- **Item veto:** The local chief executive, except the punong barangay, shall have the power to veto any particular item or items of an:
 - (1) appropriations ordinance;
 - (2) ordinance or resolution adopting the local development plan or public investment program; and
 - (3) ordinance directing the payment of money or creating liability
- In case of an item veto, the veto shall not affect the items not objected to. If the veto is not overridden, the items in the appropriations ordinance of the previous year corresponding to those vetoed shall be deemed re-enacted.

F.10. PUBLICATION AND EFFECTIVITY OF ORDINANCES

The following rules apply to (1) ordinances and (2) resolutions approving the local government plan and public investment programs.

<i>Publication</i>	<i>Effectivity</i>
General Rule [Sec. 59(a), LGC]	
Posted (1) in a bulletin board at the entrance of the provincial capitol or city, municipal, or barangay hall, as the case may be, and (2) in at least 2 other conspicuous places	10 days after posting, unless otherwise stated in the ordinance
Highly Urbanized and Independent Component Cities [Sec. 59(d), LGC]	
In addition to posting, <i>main features</i> of the ordinance shall be published once (a) in a local newspaper of general circulation; or if none, (b) in any newspaper of general circulation	10 days after completion of posting and publication requirements, unless otherwise stated in the ordinance
All Ordinances with Penal Sanctions [Secs. 59(d), 511, LGC]	
(1) Posted at prominent places in the provincial capitol, or city, municipal or barangay hall for a minimum period of 3 consecutive weeks;	Unless otherwise provided therein, the ordinance shall take effect on the day following its publication, or at the end of the period of posting, whichever occurs later.
(2) Published in a newspaper of general circulation within the LGU concerned (where available) except in the case of barangay ordinances; AND	
(3) Gist of such penal ordinance shall be published in a newspaper of	

general circulation within the province where the local legislative body belongs; if none, posting shall be made in all municipalities and cities of the said province

Tax Ordinances and Revenue Measures [Sec. 188, LGC]

Within 10 days after their approval, certified true copies shall be published in full for 3 consecutive days (a) in a newspaper of local circulation, or, (b) if none, the same may be posted in at least 2 conspicuous and publicly accessible places	10 days after publication or posting, unless otherwise stated in the ordinance
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F.11. REVIEW OF ORDINANCES/ RESOLUTIONS [SEC. 59, LGC]

<i>Sanggunian of Component Cities and Municipalities</i>	<i>Sangguniang Barangay</i>
By Whom	
Sangguniang Panlalawigan	Sangguniang Panlungsod or Sangguniang Bayan
When	
Within 3 days from approval, forwarded by Secretary of the Sanggunian;	Within 10 days from approval, forwarded by Sangguniang Barangay
What	
(1) Ordinances and (2) Resolutions approving local development plans and public investment programs	All barangay ordinances

Sanggunian of Component Cities and Municipalities		Sangguniang Barangay
How Reviewed		
Sangguniang Panlalawigan shall examine the documents or transmit them first to the Provincial Attorney (if none, to Provincial Prosecutor) for comments and recommendations	The sanggunian concerned shall examine the ordinance	
Grounds for Rejection		
If beyond the power conferred upon the Sanggunian concerned	Whether consistent with law and the city and municipal ordinances	
Period to Review		
30 days; if no action after 30 days, presumed consistent with law and valid	30 days; if no action after 30 days, deemed approved	

- Any attempt to any enforce any ordinance or resolution approving the local development plan or public investment program, after the disapproval thereof, shall be sufficient ground for the suspension or dismissal of the official or employee concerned. [Sec. 58, LGC]

Prior Hearing Requirement for Tax and Revenue Measures

Public hearings must be conducted prior to the enactment of a tax ordinance or revenue measure. [Sec. 187-188, LGC]

Review of Tax Ordinances by the Secretary of Justice [sec. 187]

Within 30 days from the effectivity of tax ordinances or revenue measures, questions on their constitutionality or legality may be raised on appeal to the Secretary of Justice.

- Sec. of Justice shall render a decision within 30 days from receipt of appeal.
- The appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual of the tax, fee or charge.
- Within 30 days from receipt of Sec. of Justice's decision or the lapse of the 60-day period without the Sec. of Justice taking action, the aggrieved party may file action with competent court.
- Sec. 187 is valid as it is merely an exercise of the power of supervision [Drilon v. Lim, G.R. No. 112497 (1994)].

F.12. FULL DISCLOSURE OF FINANCIAL AND BUSINESS INTERESTS OF SANGGUNIAN MEMBERS

What:

- Any business and financial interests; and
 - Any business, financial, or professional relationship or relation by affinity/consanguinity up to the 4th degree with any person affected by any ordinance or resolution under consideration by the sanggunian which may result in a conflict of interest. Such relationship shall include:
 - Ownership of stock or capital, or investment, in the entity or firm to which the ordinance or resolution may apply;
 - Contracts or agreements with any person or entity which may be affected by the ordinance or resolution. [Sec. 51(a)]
- Conflict of Interest** refers in general to one where it may be reasonably deduced that a member of the sanggunian may not act in the public interest due to some private, pecuniary, or other personal considerations that may tend to affect his judgment to the

prejudice of the service or the public.
[Sec. 51(a)]

- **Exception:** If the Constitution or statute has a definition which specifically applies to the situation.
[Sec. 51(a)]

When: Disclosure is required

- (1) Upon assumption of office [Sec. 51(a)];
- (2) Before participation in the deliberations on the ordinance or resolution under consideration [Sec. 51(b)(1)];
- (3) If he did not participate during the deliberations, before voting on the ordinance or resolution on second and third reading [Sec. 51(b)(1)]; and
- (4) when taking a position or making privilege speech that may affect his interests [Sec. 51(b)(2)]

How: (1) In writing and (2) submitted to the secretary of the sanggunian or the secretary of the committee of which he is a member.
[Sec. 51(b)]

Requisites for a Valid Ordinance

[*City of Manila v. Laguio, Jr. (2005)*]

- (1) It must be within the corporate powers of the LGU to enact;
- (2) It must be passed according to the procedure prescribed by law; and
- (3) It must conform to the following substantive requirements:
 - (a) Not contrary to the Constitution and statute
 - (b) Not unfair or oppressive
 - (c) Not partial or discriminatory
 - (d) Not unreasonable
 - (e) May regulate, but not prohibit trade
 - (f) Must be general and consistent with public policy.

V. Local Initiative and Referendum

A. LOCAL INITIATIVE

<i>Definition</i>	Legal process whereby the registered voters of an LGU may directly propose, enact, or amend an ordinance. [Sec. 120]
<i>Exercised by</i>	All registered voters of the provinces, cities, municipalities, and barangays. [Sec. 121]
<i>Effectivity</i>	15 days after Certification by the COMELEC that the proposition is approved by a majority of the votes cast [Sec. 123]
<i>Limitations on Power of Initiative</i>	<ol style="list-style-type: none"> (1) Local initiative shall not be exercised more than once a year. (2) Initiative shall extend only to subjects or matters which are within the legal powers of the sanggunians to enact. (3) If at any time before the initiative is held, the sanggunian concerned adopts <i>in toto</i> the proposition presented and the local chief executive approves the same, the initiative shall be cancelled. However, those against such action may, if they so desire, apply for initiative. [Sec. 124]
<i>Limitations upon</i>	<ul style="list-style-type: none"> • Any proposition or ordinance approved

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through the system of initiative and referendum:

- Shall not be repealed, modified, or amended by the sanggunian concerned within six (6) months from the date of its approval; and
- May be amended, modified, or repealed by the sanggunian within three (3) years thereafter by a vote of three-fourths (3/4) of all its members
- In case of barangays, the period shall be eighteen (18) months. [Sec. 125]

- The petition shall be signed before the Election Registrar, or his designated representative, in the presence of a representative of the proponent and a representative of the local legislative body concerned in a public place in the LGU.

(4) **Certification of COMELEC and setting of date of vote.** The COMELEC shall certify that the required number of signatures has been obtained and shall set a date for approval of the proposition within 60 days from the date of certification by the COMELEC in case of provinces and cities, 45 days in case of municipalities, and 30 days in case of barangays.

(5) **Voting and Results.** The results of the initiative shall be certified and proclaimed by the COMELEC.

A.1. PROCEDURE [SEC. 122, LGC]

(1) **File petition with local legislature.** Not less than 1,000 registered voters in case of provinces and cities, 100 in case of municipalities, and 50 in case of barangays, may file a petition with the local legislative body, proposing the adoption, enactment, repeal, or amendment, of any ordinance or resolution.

(2) **Invoke initiative by giving notice.** If no favorable action thereon is made by local legislative body within 30 days from its presentation, the proponents through their duly authorized and registered representatives may invoke their power of initiative, giving notice thereof to the local legislative body concerned

- Two or more propositions may be submitted in an initiative.

(3) **Collection of signatures.** Proponents shall have 90 days in case of provinces and cities, 60 days in case of municipalities, and 30 days in case of barangays, from notice to collect the required number of signatures.

B. LOCAL REFERENDUM

- Legal process whereby the registered voters of the local government unit may approve, amend, or reject any ordinance enacted by the Sanggunian.
- It shall be held under the direction of COMELEC within 60 days in case of provinces and cities, 45 days in case of municipalities and 30 days in case of barangays. [Sec. 126]

B.1. INITIATIVE V. REFERENDUM

	<i>Initiative</i>	<i>Referendum</i>
<i>How initiated</i>	Initiated by the people directly.	Law-making body submits matter to the registered voters of its territorial jurisdiction.
<i>Objective</i>	To legislate, because the	To approve or reject any

<i>or Purpose</i>	law-making body fails or refuses to enact the ordinance or resolution that they desire or because they want to amend or modify one already existing.	ordinance or resolution which is duly enacted or approved by such lawmaking authority.
<i>Role of Legislature</i>	No role [except for unfavorable action on the petition submitted to it]. Initiative is a process of law-making by the people themselves without the participation and against the wishes of their elected representatives.	Legislative. A referendum consists merely of the electorate approving or rejecting what has been drawn up or enacted by a legislative body. [SBMA v. COMELEC, G.R. No. 125416 (1996)]

VI. Corporate Powers

- (a) Every local government unit, as a corporation, shall have the following powers:
- (1) To have continuous succession in its corporate name;
 - (2) To sue and be sued;
 - (3) To have and use a corporate seal;
 - (4) To acquire and convey real or personal property;
 - (5) To enter into contracts; and
 - (6) To exercise such other powers as are granted to corporations, subject to the limitations provided in this Code and other laws.
- (b) Local government units may continue using, modify, or change their existing corporate seals: *Provided*, That newly established local government units or those without corporate seals may create their own corporate seals which shall be registered with the Department of the Interior and Local Government: *Provided, further*, that any change of corporate seal shall also be registered as provided hereon.
- (c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.
- (d) Local government units shall enjoy full autonomy in the exercise of their proprietary functions and in the limitations provided in this Code and other applicable laws. [Sec. 22, LGC]

A. TO SUE AND BE SUED

LGUs are suable even if they are acting in their governmental capacity because they are given the power “to sue and be sued.”

- **Suability v. Liability:** However, the fact that they are suable does not necessarily mean that they are liable. Reference must be had to the applicable law and established facts to determine their liability. [*San Fernando, La Union v. Firme*, G.R. No. 52179 (1991)]
- The Congressional grant of the consent to be sued only means that the State [here, the LGU] gives up its immunity from suit. This does not concede *liability*, but merely allows the plaintiff a chance to prove, if it can, that the State or its officials are liable. [*USA v. Guinto*, G.R. No. 76607 (1990)]

B. TO ACQUIRE AND SELL PROPERTY (REAL OR PERSONAL)

- **Nature and control:** If the property is owned by the municipality in its public and governmental capacity, the property is public and Congress has absolute control over it. If the property is owned in its private or proprietary capacity, then it is patrimonial and Congress has no absolute control. The municipality cannot be deprived of it without due process and payment of just compensation.
- To be considered public, it is enough that the property be held and devoted for governmental purposes like local administration, public education and public health. [*Province of Zamboanga del Norte v. City of Zamboanga*, G.R. No. L-24440 (1968)]
- Regardless of the source or classification of land in the possession of a municipality, excepting those

acquired with its own funds in its private or corporate capacity, such property is held in trust for the State for the benefit of its inhabitants, whether it be for governmental or proprietary purposes. It holds such lands subject to the paramount power of the legislature to dispose of the same, for after all it owes its creation to it as an agent for the performance of a part of its public work, the municipality being a subdivision or instrumentality thereof for purposes of local administration. [*Rabuco v. Villegas*, G.R. No. L-24661 (1974)]

C. TO ENTER INTO CONTRACTS

C.1. REQUISITES

- (1) Entered into by the local chief executive in behalf of the LGU;
 - (2) Prior authorization by Sanggunian concerned; and
 - (3) Legible copy of contract posted at a conspicuous place in the provincial capitol or city, municipal or barangay hall [Sec. 22, LGC]
- **Appropriation ordinance as prior authorization:** Prior authorization may come in the form of a sufficiently detailed appropriation ordinance, but *not* when the ordinance is merely a reenacted budget.
 - **Specificity requirement:** No further authorization is required *if* the appropriation ordinance already contains in sufficient detail the project and cost of a capital outlay *such that all the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract*. [See *Quisumbing v. Garcia*, G.R. No. 175527 (2008)]
 - The appropriation ordinance is not sufficient if it merely describes the projects in generic terms (e.g. “infrastructure projects,” “inter-municipal waterworks.”) [*Id.*]

being contrary to law. [*Dacanay v. Asistio*, G.R. No. 93654 (1992)]

Authority to Negotiate and Secure Grants

- **Who may negotiate:** Local Chief Executive, upon authority of Sanggunian.
- **What are negotiated:** Financial grants or donations in kind in support of basic services or facilities from local and foreign assistance agencies.
- **Approval by national agency concerned**
 - **General rule:** No necessity of securing clearance or approval from national agency or from any higher LGU
 - **Exception:** If the projects financed by such grants or assistance be with national security implications, they shall be approved by the national agency concerned. Failure by such national agency to act on request for approval within 30 days from receipt thereof will render the projects deemed approved.
- **Reporting duty:** The local chief executive shall report to both Houses of Congress and the President the nature, amount and terms of such assistance within 30 days upon signing of the grant agreement or deed of donation [Sec. 23, LGC]

Types of Ultra Vires Acts

<i>Void Ultra Vires Acts</i>	<i>Ultra Vires Acts Subject to Ratification/Validation</i>
Act is outside the municipality's jurisdiction	Act is attended only by an irregularity but remains within municipality's powers
Examples: (1) Contract entered into beyond the express, implied, or inherent powers of the LGU; (2) Contract does not comply with substantive requirements of law (e.g. actual appropriation and certificate of availability of funds for an expenditure of public funds)	Examples: (1) Contract entered into by the improper department, board, officer, or agent; (2) Contract does not comply with the formal requirements of a written contract (e.g. Statute of Frauds) <i>[Land Bank v. Cacayuran (2013)]</i>

C.2. ULTRA VIRES CONTRACTS

An LGU can legitimately exercise powers of government only within the limits of the authority granted to it, or else its acts are ultra vires.

- **Illustration:** A public street is property for public use; hence, outside the commerce of man. Being outside the commerce of man, it may not be the subject of lease or other contract. The city government, contrary to law, has been leasing portions of the streets. Such lease or license is null and void for

VII. Liability of Local Government Units

Local government units and their officials are not exempt from liability for death or injury to persons or damage to property. [Sec. 24, LGC]

- Under pre-LGC case law and B.P. Blg. 337, an LGU is not liable for the acts of its officers or agents in the performance of its government functions.
- *However*, it is not clear if sec. 24 intended to broaden the liability of local governments and their officials, since the reference to immunity for official functions was removed. [GATMAYTAN]

When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action. [Art. 34, Civil Code]

The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. [...]

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176 shall be applicable. [...]

The responsibility treated of in this article

shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. [Art. 2180, Civil Code]

Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. [Art. 2189, Civil Code]

Political/Governmental Acts	Corporate/Proprietary Acts
Liability	
LGU generally not liable unless a statute provides otherwise, e.g. (1) Art. 2189, Civil Code (2) Art. 34, Civil Code	Can be held liable <i>ex contractu</i> or <i>ex delicto</i>
Defense	
No valid defense for non-performance	Defense of due diligence in the selection and supervision of its officers
Personal Liability of Officers	
Officers or agents acting within official duties are not liable unless they acted willfully and maliciously [Mendoza v. de Leon, G.R. No. 9596 (1916)]; but see LGC, sec. 24]	Officers and agents are like (a) individuals; or (b) the directors and officers of a private corporation, i.e. they are liable if they acted in bad faith or with gross negligence. [See Mendoza]
Application of Respondeat Superior	
<i>Respondeat superior</i> does not apply	<i>Respondeat superior</i> applies [Mendoza v. de Leon (1916)]

Illustrations

A. IN CONTRACTS

General Rule: The LGU is liable only for contracts that are *intra vires*.

Exception: The Doctrine of Implied Municipal Liability provides that an LGU may become obligated upon an implied contract to pay reasonable value of the benefits accepted by it as to which it has the general power to contract. [*Province of Cebu v. IAC*, G.R. No. 72841 (1987), on the hiring of a private counsel by the governor which was not repudiated by the provincial board]

Exception to the Exception: The LGU may not be estopped in order to validate a contract which the LGU is not authorized to make even if it has accepted the benefits thereunder [*San Diego v. Municipality of Naujan*, G.R. No. L-9920 (1960), on the lease of municipal waters without a public bidding]

B. IN TORTS

Under jurisprudence, liability of the LGU would depend on the nature of the act.

- If in the performance of a **governmental function**, the LGU is *not* liable. [*Palafox v. Province of Ilocos Norte*, G.R. No. L-10659 (1958), on an accident during the construction of a provincial road.]
- If in the performance of a **proprietary function**, the LGU is *liable*. Hence, the LGU is liable for:
 - The improper grant of a ferry service franchise [*Mendoza v. de Leon* (1916)];
 - Deaths caused by a collapsed stage in a town fiesta [*Torio v. Fontanilla* (1978)]

Liability for back pay of employees

LGUs may be held liable for the back pay or wages of employees or laborers illegally separated from the service, whether employed to perform (a) proprietary functions (e.g. market sweepers) or (b) performing primarily governmental functions (e.g. policemen). [*Guillergan v. Ganzon*, G.R. No. L-20818 (1966)]

Liability under Art. 2189 based on control

For liability to arise under Art. 2189 of the Civil Code, ownership of the roads, streets, bridges, public buildings and other public works, is not a controlling factor, it being sufficient that a province, city or municipality has control or supervision thereof. [*Municipality of San Juan v. CA*, G.R. No. 121920 (2005)]

C. PERSONAL LIABILITY OF THE PUBLIC OFFICIAL

The public official is personally liable for damages

- (1) In contracts and torts, if he acts (i) beyond the scope of his powers; or (ii) with bad faith [*see Rivera v. Maclang*, G.R. No. L-15948 (1963)]; and
 - (2) For his refusal or neglect, without justifiable cause, to perform his official duty. [Art. 27, Civil Code]
- While a municipality cannot be bound by a contract which is void for being *ultra vires*, "case law states that the [officers] who authorized the same can be held *personally accountable* for acts claimed to have been performed in connection with official duties where they have acted *ultra vires*." [*See Land Bank v. Cacayuran*, G.R. No. 191667 (2013)]

VIII. Settlement of Boundary Disputes

A. AMICABLE SETTLEMENT

Boundary disputes between and among local government units shall, as much as possible, be settled amicably. [Sec. 118 (a)-(d), LGC]

Boundary dispute between	Where	Amicably settled by
2 or more barangays	Same city or municipality	Sangguniang Panlungsod or Sangguniang Bayan
2 or more municipalities	Same province	Sangguniang Panlalawigan
Municipalities or component cities	Different provinces	Jointly referred to sanggunians of the provinces concerned
Component city or Municipality v. Highly urbanized city	N/A	Jointly referred to respective sanggunians of the parties
Between 2 or more highly urbanized cities		

N.B. The power of provincial boards to settle boundary disputes is limited to implementing the law creating a municipality. Thus, provincial boards do not have the authority to approve agreements which in effect amend the boundary stated in the creating statute. [*Municipality of Jimenez v. Baz*, G.R. No. 105746 (1996)]

B. FORMAL TRIAL

Trial by Sanggunian: In the event the Sanggunian fails to effect an amicable settlement within 60 days from referral of the dispute,

- It shall issue a certification to that effect; and
- The dispute shall be formally tried by the Sanggunian concerned, which shall decide the issue within 60 days from the date of the certification referred to above. [Sec. 118(e), LGC]

Trial by RTC: When the dispute between two LGUs do not fall under those enumerated in LGC, sec. 118, the RTC shall exercise original jurisdiction over the settlement of a boundary dispute between a municipality and an independent component city. [*Municipality of Kananga v. Madrona*, G.R. No. 141375 (2003), applying Sec. 19(6), B.P. Blg. 129 or the RTC's general original jurisdiction]

C. APPEAL

Appeal of the Sanggunian Decision

- When:** Within the time and manner prescribed by the Rules of Court
- Where:** Proper Regional Trial Court having jurisdiction over the area in dispute. [Sec. 119, LGC]

N.B. Maintenance of the Status Quo

Pending final resolution of the dispute, the status of the affected area prior to the dispute shall be maintained and continued for all purposes. [Art. 18, LGC IRR]

- The conduct of a plebiscite on the creation of a barangay should be suspended or cancelled in view of a pending boundary dispute between two local governments involving an area

covered by the proposed barangay. A requisite for the creation of a barangay is for its territorial jurisdiction to be properly identified by metes and bounds or by more or less permanent natural boundaries. Precisely because territorial jurisdiction is an issue raised in the pending boundary dispute, until and unless such issue is resolved with finality, to define the territorial jurisdiction of the proposed barangay would only be an exercise in futility. [*City of Pasig v. COMELEC*, G.R. No. 125646 (1999)]

IX. Succession Of Elective Officials

A. SUCCESSION IN PERMANENT VACANCIES

Permanent Vacancy occurs when an elective local official:

- (1) Fills a higher vacant office;
- (2) Refuses to assume office;
- (3) Fails to qualify;
- (4) Dies;
- (5) Is removed from office;
- (6) Voluntarily resigns; or
- (7) Is otherwise permanently incapacitated from discharging the functions of his office. [Sec. 44, ¶ 2, LGC]

A.1. VACANCY IN THE LOCAL CHIEF EXECUTIVE [SEC. 44, LGC]

<i>Vacant Positions</i>	<i>Successor</i>
Governor; or Mayor	Vice Governor; or Vice Mayor
Vice-Governor; or Vice-Mayor	Highest-ranking Sanguinang member

<i>Vacant Positions</i>	<i>Successor</i>
Governor and Vice-Governor; or Mayor and Vice-Mayor	Highest-ranking Sanggunian member to become Governor/ Mayor; Second highest-ranking Sanggunian member to become Vice-Governor/ Vice-Mayor Subsequent vacancies filled according to their rank.

<i>Vacant Positions</i>	<i>Successor</i>
Punong Barangay	Highest-ranking Sangguniang Barangay Member
<ul style="list-style-type: none"> • Resolution of ties: A tie between or among highest ranking sangguninan members shall be resolved by the drawing of lots. [Art. 83(b)(3), LGC IRR] • Ranking in the sanggunian: Determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election. [Sec. 44, LGC] 	

A.2. PERMANENT VACANCIES IN THE SANGGUNIAN [FARIÑAS V. BARBA, G.R. NO. 116763 (1996); SEC. 45, LGC]

<i>Position</i>	<i>Appointing Authority</i>	<i>If prior member was member of a political party</i>	<i>If prior member not a member of any political party</i>
Sangguniang Panlalawigan	President through the Executive Secretary	Nomination and Certification of the political party of the member who caused the vacancy issued by the highest official of the political party	Recommendation of the Sangguniang Panlalawigan
Sangguniang Panlungsod (of highly urbanized and independent component cities)			Recommendation of the Sangguniang Panlungsod
Sangguniang Panlungsod (of component cities)	Governor	Nomination and Certification of the political party of the member who caused the vacancy issued by the highest official of the political party	Recommendation of Sangguniang Panglungsod
Sangguniang Bayan			Recommendation of Sangguniang Bayan
Sangguniang Barangay	City or Municipal Mayor	N/A (There is no right given to a political party to nominate the person to fill the vacancy in the Sangguniang Barangay because the members of the Sangguniang Barangay are not allowed to have party affiliations. [<i>Fariñas v. Barba</i> (1996)])	Recommendation of Sangguniang Barangay

- If the sanggunian member who caused the vacancy is a member of a political party, the appointee must come from the same political party as that of the sanggunian member who caused the vacancy. [Sec. 45(b), LGC]
 - **Rationale:** To maintain party representation as willed by the people in the election. [*Navarro v. CA*, G.R. No. 141307 (2001)]
 - There must be a nomination and certificate of membership from the highest official of the political party concerned.
 - An appointment without such nomination and certification is null and void ab initio and is a ground for administrative action against the responsible official. [Sec. 45(b), LGC]
- If the sanggunian member who caused the vacancy does not belong to any political party, the local chief executive shall appoint a qualified person, upon recommendation of the sanggunian concerned. [Sec. 45(c), LGC]
- The local chief executive under Sec. 45(c) LGC refers to the local chief executive under Sec. 45(a) while the sanggunian concerned refers to the sanggunian where the vacancy occurs. [*Fariñas v. Barba* (1996)]
- The appointing authority is not bound to appoint anyone recommended to him by the sanggunian concerned. The power of appointment is a discretionary power. On the other hand, neither is the appointing authority vested with so large a discretion that he can disregard the recommendation of the sanggunian concerned. Since the recommendation takes the place of nomination by political party, the recommendation must likewise be considered a condition sine qua non for the validity of the appointment. [*Fariñas v. Barba* (1996)]
- The appointee under Sec. 45 serves the unexpired term of the vacant office.
- If the vacancy pertains to barangay or youth representation in the sanggunian,

the vacancy is automatically filled by the official next in rank of the organization concerned. [Sec. 45(d), LGC]

A.3. RESIGNATION OF ELECTIVE OFFICIALS

General Rule: Deemed effective only upon acceptance of the resignation by the following authorities:

Resignation by	Approved by
Governors and vice-governors; Mayors and vice-mayors of HUCs and ICCs	President
Mayors and vice-mayors of component cities and municipalities	Governors
Sanggunian members	Sanggunian concerned
Barangay officials	City or municipal mayor

Exceptions: Resignation is deemed accepted when:

- (1) **Not acted upon:** The resignation shall be deemed accepted if not acted upon by the authority concerned within 15 working days from the receipt thereof. [Sec. 82, LGC]
- (2) **Irrevocable resignations by sanggunian members** shall be deemed accepted upon presentation before an open session of the sanggunian concerned and duly entered in its records. [Sec. 82, LGC]

Resignation not allowed in recall: The elective local official sought to be recalled shall not be allowed to resign while the recall process is in progress. [Sec. 73, LGC]

Resignation v. Abandonment

Although a resignation is not complete without an acceptance thereof by the proper authority, an office may still be deemed relinquished through *voluntary abandonment* which needs no acceptance.

- *On Resignation:* Under established jurisprudence, resignations, *in the absence of statutory provisions* as to whom they should be submitted, should be tendered to the appointing person or body.
- *On Abandonment:* Abandonment is "voluntary relinquishment of an office by the holder, with the intention of terminating his possession and control thereof." It is a species of resignation; while resignation in general is a formal relinquishment, abandonment is a voluntary relinquishment through nonuser. [*Sangguniang Bayan of San Andres v. CA*, G.R. No. 118883 (1998)]

Requisites for resignation	Essential elements of abandonment
(1) Intention to relinquish a part of the term;	(1) Intent to abandon; and
(2) Act of relinquishment; and	(2) Overt act by which the intention is to be carried into effect
(3) Acceptance by the proper authority	

B. SUCCESSION IN TEMPORARY VACANCIES [SEC. 46, LGC]

Temporary vacancy occurs when the local chief executive is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to:

- (1) Leave of absence;
- (2) Traveling abroad; or
- (3) Suspension from office.

Office where Temporary Vacancy	Who Temporarily Succeeds into Office
--------------------------------	--------------------------------------

Occurs	
Governor	Vice-Governor, automatically
Mayor	Vice-Mayor, automatically
Punong Barangay	Highest-ranking Sanggunian Member, automatically
Local Chief Executive is travelling within the country but is outside his territorial jurisdiction for a period not exceeding three consecutive days	(1) The person designated in writing by the local chief executive; OR (2) Vice-Governor, Vice-Mayor, or highest-ranking Sangguniang Barangay Member, on the 4 th day of absence, if local chief executive fails or refuses to designate a successor

B.1. EXTENT OF DUTY EXERCISED BY TEMPORARY SUCCESSOR

General Rule: The successor shall automatically exercise the powers and perform the duties and functions of the local chief executive.

Exception: The successor may exercise the power to appoint/suspend/dismiss employees only if the period of incapacity exceeds 30 working days

Designation by Local Chief Executive

General Rule: The local chief executive can only authorize the vice-governor, city/municipal vice-mayor, or highest ranking sangguniang barangay member, as the case may be, to exercise powers/duties/functions of his office. [Sec. 46(e), LGC]

Exception: If the local chief executive is traveling *within* the country *but outside* his territorial jurisdiction for a period *not exceeding 3 consecutive days*, he may designate in writing the officer-in-charge.

- The creation of a temporary vacancy in the office of the Governor creates a corresponding temporary vacancy in the office of the Vice Governor whenever the latter acts as Governor by virtue of such temporary vacancy. This event constitutes an inability on the part of the presiding officer (Vice Governor) to preside during the sanggunian sessions, which thus calls for the operation of the remedy set in sec. 49(b) of the LGC on the election of a temporary presiding officer. [*Gamboa v. Aguirre*, G.R. No. 134213 (1999)]

B.2. TERMINATION OF TEMPORARY INCAPACITY

Upon submission by the local chief executive to the sanggunian of a *written declaration* that he has reported back to office

- If the temporary incapacity is due to legal causes, the local chief executive must also submit the necessary documents showing that the legal causes no longer exist. [Sec. 46(b)]

B.3. LEAVES OF ABSENCE

<i>Local Official</i>	<i>LOA Approved by</i>
Governors and mayors of highly-urbanized cities or independent component cities	The President or his duly authorized representative
Vice-Governors, City/Municipal Vice-Mayors	The Local Chief Executive
City/Municipal Mayors of component cities and municipalities	The Governor
Sanggunian Panlalawigan, Panglungsod, and Bayan Members and their employees	The Vice-Governor or Vice-Mayor
Punong Barangays	The City/Municipal Mayor
Sanggunian Barangay Members	The Punong Barangay

If the application for LOA is not acted upon within 5 working days after receipt, the application is deemed approved. [Sec. 46, LGC]

X. Discipline of Local Officials

A. DISCIPLINE OF ELECTIVE OFFICIALS

A.1. GROUNDS FOR DISCIPLINARY ACTION

- (1) Disloyalty to the Republic of the Philippines;
- (2) Culpable violation of the Constitution;
- (3) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- (4) Commission of any offense involving moral turpitude or an offense punishable by at least *prision mayor*;
- (5) Abuse of authority;
- (6) Unauthorized absence for fifteen (15) consecutive working days
 - **Except** in the case of members of the local legislative bodies.
- (7) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
- (8) Such other grounds as may be provided in the LGC and other laws. [Sec. 60(a), LGC]

A.2. JURISDICTION

i. Administrative Complaints under the LGC [LGC, sec. 61]

<i>Elective Local Official of</i>	<i>Complaint filed at</i>
Province, highly urbanized city, independent component city, or component city	Office of the President
Municipality	Sangguniang Panlalawigan
Barangay	Sangguniang Panglungsod or Bayan

- No investigation may be held within 90 days immediately prior to any local election. [Sec. 62, LGC]

ii. Ombudsman Jurisdiction

<i>Primary Jurisdiction</i> [R.A. No. 6770, sec. 15]	Acts or omissions of a public officer or employee in cases cognizable by the Sandiganbayan (i.e. salary grade of 27 or higher)
<i>Concurrent Jurisdiction</i> [Sec. 61, LGC]	Cases cognizable by regular courts and other investigative agencies of the government

- In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body in which the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction. [*Office of the Ombudsman vs Rodriguez*, G.R. No. 172700 (2010)]

Who is salary grade 27 and above? [Sec. 443-486, LGC]

<i>Municipalities</i>	Municipal Mayor
<i>Cities</i>	City Mayor; Vice-Mayor; and (for highly-urbanized cities) Sanggunian Panglungsod members
<i>Provinces</i>	Governor; Vice-Governor; and Sanggunian Panlalawigan members.

- The powers of the Ombudsman are not merely recommendatory. Under RA 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than members of Congress and the Judiciary. [*COA, Regional Office No. 13 v. Hinampas*, G.R. No. 158672 (2007)]

iii. Sandiganbayan Jurisdiction

Exclusive original jurisdiction over violations of RA 3019, RA 1379 and Chapter II, Sec. 2, Title VII, Book II of the RPC (Bribery) and other offenses or felonies in relation to public office where *one or more* of the accused are officials occupying positions corresponding to salary grade 27 or higher

- Where *none* of the accused are occupying positions corresponding to salary grade 27 or higher, exclusive original jurisdiction shall be vested in the proper RTC or first level court as the case may be. The Sandiganbayan in such case shall exercise exclusive appellate jurisdiction over final judgments or orders of RTCs in the exercise of their original or appellate jurisdiction. [Sec. 4, PD 1606 as amended]

A.3. GROUNDS FOR DISCIPLINARY ACTION

i. Under the LGC

<i>Elective local official of</i>	<i>Suspension imposed by</i>
Province, highly urbanized city, or independent component city	President
Component city, or municipality	Governor
Barangay	The Mayor

When Imposed: Any time (1) the issues are joined, (2) when the evidence of the guilt is strong *and* (3) given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or threaten the safety/integrity of the records or evidence. [Sec. 63(b), LGC]

Not in the nature of a penalty

A preventive suspension is merely a preliminary step in an administrative

investigation, and can be decreed on an official under investigation after the charges are brought and even before the charges are heard. [*Castillo-Co v. Barbers*, G.R. No. 129952 (1998)]

Rules on Length of Preventive Suspension

- (1) Any single preventive suspension cannot exceed 60 days;
- (2) Cannot be imposed within 90 days immediately prior to any local election; if imposed before said period but extends to such, automatically lifted upon start of the 90 day period;
- (3) If there are several administrative cases against an elective official, he cannot be preventively suspended for more than 90 days within a single year on the same ground/s existing and known at the time of the first suspension;
- (4) Once lifted, official is deemed reinstated without prejudice to the continuance of the proceedings against him. [Sec. 62-63, LGC]

Rights of Respondent Pending Preventive Suspension

- (1) No salary paid during period of suspension, but if subsequently exonerated and reinstated, he shall be paid full salary that accrued during such suspension;
- (2) Accorded full opportunity to appear and defend himself in person or by counsel, to confront and cross-examine witnesses, and require attendance of witnesses and production of evidence through compulsory process of subpoena or subpoena duces tecum. [Sec. 64-65, LGC]

ii. Under the Ombudsman Act [R.A. No. 6770, sec. 24]

Who may impose: Ombudsman or Deputy Ombudsman

Requisites for Preventive Suspension

- (1) The evidence of guilt is strong; and
- (2) Any of the following is present:
 - (a) The charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty;
 - (b) The charges would warrant removal from the service; or
 - (c) The respondent's continued stay in office may prejudice the case filed against him.

Length of Preventive Suspension

General Rule: Until the case is terminated by the Office of the Ombudsman but not more than six (6) months without pay

Exception: When the delay in the disposition of the case by the Ombudsman is due to the fault, negligence or petition of the respondent, the period of such delay shall not be counted in computing the period of suspension

N.B. The shorter period of suspension under the LGC is intended to limit the period of suspension that may be imposed by a mayor, governor or the President, who may be motivated by *partisan political considerations*. In contrast, the Ombudsman is not likely to be similarly motivated because it is a constitutional body. [*Garcia v. Mojica*, G.R. No. 139043 (1999)]

iii. Preventive suspension pursuant to an Information on charges under R.A. No. 3019

Any incumbent public officer against whom any criminal prosecution under a valid information under RA 3019 or under Title 7, Book II of the RPC or for any offense involving fraud upon government or public funds or property is pending in court *shall* be suspended from office. [Sec. 13, R.A. No. 3019]

- The suspension *pendente lite* under Sec. 13, RA 3019 is *mandatory* upon the filing of a valid *information* against the erring official. This is based on the presumption that unless the public

officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both.

- The suspension is not automatic, but requires the determination of the presence of a valid information. Upon determination of validity, it is the court's ministerial duty to issue an order of preventive suspension. [*Segovia v. Sandiganbayan*, G.R. No. 124067 (1998)]
- The term "office" in Sec. 13, RA 3019 applies to any office which the officer might currently be holding and not necessarily the particular office in relation to which he is charged. [*Segovia v. Sandiganbayan* (1998)]

A.4. REMOVAL AND OTHER SANCTIONS

i. Suspension

The *penalty* of suspension shall not exceed the unexpired term of the respondent or a period of 6 months for every administrative offense.

- It shall not be a bar to the candidacy of the respondent so suspended. [Sec. 66(b), LGC]

ii. Removal

An elective local official may be removed from office by order of the proper court. [Sec. 60, LGC]

- The penalty of removal from office as a result of administrative investigation shall be considered a bar to the candidacy of the respondent for any elective position. [Sec. 66(c), LGC]
- A suspension for multiple offenses does not amount to a removal if *each* suspension corresponding to each offense does not exceed 6 months. [*Salalima v. Guingona*, G.R. No. 117589 (1996)]

Proper court order

Local legislative bodies and/or the Office of the President cannot validly impose the

penalty of dismissal or removal from service on erring local elective officials. It is clear from Sec. 60 of LGC that an elective local official may be removed from office on the grounds enumerated only by order of the proper court.

- Art. 124 (b), Rule XIX of the Rules and Regulations Implementing the LGC, which states that “an elective local official may be removed from office by order of the proper court *or the Disciplining Authority whichever first acquires jurisdiction* to the exclusion of the other” is void for being repugnant to Sec. 60, LGC.
- But if the official concerned is an *appointive* official, the OP may remove him. [*Pablico v. Villapando*, G.R. No. 147870 (2002)]

XI. Administrative Appeal

A. PERIOD FOR APPEAL UNDER THE LGC

30 days from receipt of the decision

B. TO WHOM APPEALABLE:

<i>Decision of</i>	<i>Appeal to</i>
Sangguniang Panglungsod of component cities; and Sangguniang Bayan	Sangguniang Panlalawigan
Sangguniang Panlalawigan; Sangguniang Panglungsod of HUCs / ICCs	Office of the President
Office of the President	[Final and executory]

Decisions are immediately executory: Appeals shall not prevent a decision from being final and executory.

- Respondent is considered to have been placed under preventive suspension during the pendency of the appeal in the event he wins, and shall be paid his salary that accrued during the pendency of the appeal. [Sec. 68, LGC]
- The phrase “decision shall be final and executory” simply means that the administrative appeal shall not prevent the enforcement of the Sanggunian decision. The decision is immediately executory but the respondent may appeal to the Office of the President or the Sangguniang Panlalawigan, as the case may be. [*Don v. Lacsá*, G.R. No. 170810 (2007)]
- Sec. 6, Admin. Order No. 18 which authorizes the President to stay the execution of the decision pending appeal remains valid despite the enactment of the LGC. The execution of decisions pending appeal is procedural

and in the absence of a clear legislative intent to remove from reviewing officials the authority to order a stay of execution, such authority can be provided in the rules and regulations governing the appeals of elective officials in administrative cases. [*Berces, Sr. v. Guingona, Jr.*, G.R. No. 112099 (1995)]

- The decisions of the Office of the President are final and executory. No motion for reconsideration is allowed by law but the parties may appeal the decision to the Court of Appeals. The appeal, however, does not stay the execution of the decision. Thus, the DILG Secretary may validly move for its immediate execution. [*Calingin v. CA*, G.R. No. 154616 (2004)]

Decisions of the Ombudsman

- **General Rule:** A decision of the Ombudsman is not immediately executory.
- **Exception:** The decision is final, immediately executory, and unappealable in the following cases:
 - (1) Where the respondent is absolved of the charge;
 - (2) Where the penalty imposed is:
 - (a) Public censure;
 - (b) Reprimand;
 - (c) Suspension of not more than one month; or
 - (d) Fine not equivalent to one month salary.
- In all other cases, the decision shall become final after the expiration of 10 days from receipt thereof by the respondent, unless a motion for reconsideration or an appeal is filed by him to the Court of Appeals. [Rule III, Sec. 7, Rules of Procedure of the Ombudsman]

C. DOCTRINE OF CONDONATION

Rule: A public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. [*Aguinaldo v. Santos*, G.R. No. 94115 (1992)]

• Not applicable where:

- (1) There is already a final determination of guilt. Subsequent re-election cannot be deemed a condonation if there was already a final determination of his guilt before the re-election. [*Reyes v. COMELEC*, G.R. No. 120905 (1996)]
- (2) Criminal cases. The doctrine finds no application to criminal cases, as these are violations against the state itself. [*Aguinaldo v. Santos* (1992)]

Overtaken. This doctrine has been overturned in *Carpio-Morales v. CA*, where the Court held that election is not a mode of condoning an administrative offense. The Court found that the basis for condonation under case law relied on was never accounted for. The doctrine cannot be sanctioned under our present Constitution, which upholds the concept that a public office is a public trust and the corollary requirement of accountability to the people at all times. [*Carpio-Morales v. CA*, G.R. No. 217126 (2015)]

D. DISCIPLINE OF APPOINTIVE OFFICIALS

The power to discipline is specifically granted by the Administrative Code to heads of departments, agencies, and instrumentalities, provinces, and cities. The appointing authority is generally the disciplinary authority.

D.1. DISCIPLINARY AUTHORITY

Except as otherwise provided, the local chief executive may impose:

- (1) Removal from service
- (2) Demotion in rank
- (3) Suspension for not more than 1 year without pay
 - (a) If less than 30 days, unappealable
 - (b) If 30 days or more, appealable to the CSC
- (4) Fine not exceeding 6 months' pay
- (5) Reprimand; and
- (6) Otherwise discipline subordinate official and employees under his jurisdiction. [Sec. 87, LGC]

D.2. PREVENTIVE SUSPENSION OF APPOINTIVE OFFICIALS

May be imposed by the local chief executive for a period not exceeding 60 days if

- (1) The charge against the official involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; OR
- (2) If there is reason to believe that the respondent is guilty of charges which would warrant his removal from service. [Sec. 85, LGC]

E. RECALL

E.1. REQUISITES

<i>Ground for recall:</i>	Loss of confidence
<i>Right given to:</i>	Registered voters of an LGU to which the local elective official subject to recall belongs

<i>Commencement of recall process:</i>	<p>By a Petition of a registered voter supported by</p> <ol style="list-style-type: none"> (1) 25% of registered voters if LGU has population not more than 20,000 (2) 20% of registered voters if LGU has voting population of 20,000 to 75,000. In no case shall petitioners be less than 5,000. (3) 15% of registered voters if LGU has voting population of 75,000 to 300,000. In no case shall petitioners be less than 15,000. (4) 10% of registered voters if LGU has voting population of more than 300,000. In no case shall petitioners be less than 45,000.
<i>When Recall Election Held:</i>	<ol style="list-style-type: none"> (1) Barangay, city, or municipal officials: not later than 30 days from completion (2) Provincial officials: not later than 45 days from completion
<i>Effects to official sought to be recalled</i>	<ol style="list-style-type: none"> (1) Not allowed to resign while recall process is in progress. [Sec. 78] (2) Automatically considered as candidate and is entitled to be voted upon. [Sec. 71]

Effectivity of recall

Upon election and proclamation of a successor. If the official sought to be recalled receive the highest number of votes, confidence in him is affirmed and he shall continue in office. [Sec. 69-75, LGC, as amended by R.A. No. 9244]

Signature requirement: The law states “upon petition of at least 25% of registered voters” and not “signed by 25% of the registered voters.” The petition must be filed not by one person but at least by 25% of the total number of registered voters. While the initiatory recall petition may not yet contain the *signatures* of at least 25% of the total number of registered voters, the petition must contain the *names* of at least 25% of the total number of registered voters in whose behalf only one person may sign the petition in the meantime. [*Angobung vs COMELEC*, G.R. No. 126576 (1997)]

- **Note:** The *Angobung* decision is likely no longer good law as it was decided under the LGC’s original provisions on recall. As amended by R.A. No. 9244, Sec. 70 of the LGC seems to require that the petition already contains the required number of signatures upon the filing thereof. [*GATMAYTAN*]

E.2. PROCEDURE

- (1) **Petition.** Filed by a registered voter in the LGU concerned to the COMELEC, supported by the necessary number of registered voters;
- (2) **COMELEC certification of sufficiency.** Within 15 days from filing of the petition, the COMELEC must certify the sufficiency of the required number of signatures. Failure to obtain the required number shall result in the automatic nullification of the petition.
- (3) **Notice, publication, posting.** Within 3 days from certification of sufficiency, COMELEC shall:

- (a) Provide the official subject of recall with a copy of the petition;
- (b) Cause the publication of the petition for 3 weeks in a national newspaper and a local newspaper of general circulation; and
- (c) Cause its posting for 10 to 20 days at conspicuous places

- (4) **Verification and authentication of signatures.** COMELEC verifies and authenticates the signatures;
- (5) **Filing of candidacies.** COMELEC announces the acceptance of candidates for the recall election, the official subject of the recall being automatically included in the list.
- (6) **Setting of election.** COMELEC shall set the election within 30 days upon completion of the above procedure in barangays, cities, and municipalities; or within 45 days in provinces.

E.3. LIMITATIONS

- (1) Any local elective official may be the subject of recall election only once during his term of office for loss of confidence.
 - (2) No recall election shall take place within 1 year from the assumption of office of the official concerned, nor within 1 year immediately preceding the date of a regular election. [Sec. 74(b), LGC]
- The phrase “regular local election” refers to an election where the office held by the local elective official sought to be recalled will be contested and be filled by the electorate. [*Paras v. COMELEC*, G.R. No. 123169 (1996)]
 - The word “recall” as used in Sec. 74(b) refers to the election day itself by means of which voters decide whether they should retain their local official or elect his replacement. Hence, recall proceedings may be initiated within 1 year from the official’s assumption of

office as long as the recall election is outside such period.

- The phrase “immediately preceding a *regular local election*” in Sec. 74(b) refers to the day of regular election not the election period which is normally at least 45 days immediately preceding the day of the election. [*Claudio v. COMELEC*, G.R. No. 140560 (2000)]

XII. Term Limits

A. LENGTH OF TERM

The term of office of elective local officials, except barangay officials (which shall be determined by law), shall be three years[.] [Art. X, Sec. 8, Constitution]

A.1. R.A. NO. 9164: SYNCHRONIZED BARANGAY AND SANGGUNIANG BARANGAY ELECTIONS (2002)

- Term of office of barangay and sangguniang kabataan officials: 3 years
- No barangay elective official shall serve for more than 3 consecutive terms in the same position
 - (1) Reckoned from the 1994 barangay elections
 - (2) Voluntary renunciation of office for any length of time shall *not* be considered as an interruption [Sec. 2]

A.2. R.A. NO. 9164: SYNCHRONIZED BARANGAY AND SANGGUNIANG BARANGAY ELECTIONS (2002)

- ***No “deemed resigned” rule for elective officials:*** An elective official running for any office other than the one which he is holding in a permanent capacity, is *no longer* considered ipso facto resigned from his office upon the filing of his certificate of candidacy. [Sec. 14]
 - N.B. Sec. 14 of RA 9006 expressly repealed Sec. 67 of BP 881 or the Omnibus Election Code which states that “any elective official, whether national or local, running for any office other than the one which he is holding in a permanent capacity, except for President and Vice-President, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy.”

- **“Deemed resigned” rule retained for appointive officials.** Sec. 14 of RA 9006 did not repeal Sec. 66 of the Omnibus election Code, leaving intact Sec. 66 thereof which imposes a limitation to appointive officials and considers them ipso facto resigned from office upon filing of their certificate of candidacy.
- **Distinction is constitutional.** (1) The classification justifying Sec. 14 of RA 9006, i.e., elected officials vis-à-vis appointive officials, is anchored upon material and significant distinctions (e.g. elective officials occupy their office by virtue of the mandate of the electorate, appointive officials are prohibited from engaging in partisan political activity except to vote). (2) All the persons belonging under the same classification are similarly treated. [*Fariñas v. Executive Secretary*, G.R. No. 147387 (2003)]

B. LIMITATION OF CONSECUTIVE TERMS

[N]o such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected. [Art X, Sec. 8, Constitution]

B.1. WHAT CONSTITUTES A TERM OF OFFICE

The term limit for elective officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he must also have been elected to the same position for the same number of times before the disqualification can apply. [*Borja v. COMELEC*, G.R. No. 133495 (1998)]

The interruption of a term that would prevent the operation of the three-term rule

involves “no less than the involuntary loss of title to office [or the right to hold on to an office]” or “at least an effective break from holding office.” [*Aldovino, Jr. v. COMELEC*, G.R. No. 184836 (2009)]

2 Conditions for the Application of the Disqualification

- (1) Elected for three consecutive times for the same position; and
- (2) Fully served three consecutive terms [*Borja v. COMELEC* (1998)]

Prevailing doctrines on issues affecting consecutiveness of terms and/or involuntary interruption

[*Abundo, Sr. v. COMELEC*, G.R. No. 201716 (2013)]

- (1) **Assumption of Office by Operation of Law:** When a permanent vacancy occurs in an elective position pursuant to the rules of succession under the LGC, *supra*:

- (a) **For the office assumed:** The successor’s service for the unexpired portion of the term of the replaced official is not treated as one full term and is not counted in the application of any term limit. [*Borja v. COMELEC* (1998)]

- (b) **For the office held before succession:** The successor’s assumption by operation of law to the higher office (e.g. vice-mayor) is considered an involuntary severance or interruption of the office he *previously* held (e.g. councilor). [i.e. it is not counted in the application of any term limit.] [*Montebon v. COMELEC*, G.R. No. 180444 (2008)]

- (2) **Recall Elections:** An elective official, who has served for three consecutive terms and who did not seek the elective position for what could be his fourth

term, but later won in a recall election, had an interruption in the continuity of his service. For, he had become in the interim [i.e. from the end of the 3rd term up to the recall election] a private citizen. [*Adormeo v. COMELEC*, G.R. No. 147927 (2002); *Socrates v. COMELEC*, G.R. No. 154512 (2002)]

(2006) and *Rivera III v. COMELEC*, G.R. No. 167591 (2007)]

- (3) **Conversion:** The abolition of an elective local office due to the conversion of a municipality to a city does not, by itself, work to interrupt the incumbent official's continuity of service [*Latasa v. COMELEC*, G.R. No. 154829 (2003)]

- (4) **Preventive Suspension:** Preventive suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office [*Aldovino, Jr. v. COMELEC* (2009)]

(5) **Losing in an Election Protest:**

- (a) When a candidate is proclaimed a winner for an elective office and assumes office, his term is interrupted when he loses in an election protest and is ousted from office, thus disabling him from serving what would otherwise be the unexpired portion of his term of office had the protest been dismissed [*Lonzanida v. COMELEC*, G.R. No. 135150 (1999) and *Dizon v. COMELEC*, G.R. No. 182088 (2009)]
- (b) However, when an official loses in an election protest and said decision becomes final *after* said official had served the *full* term for said office, then his loss in the election contest does *not* constitute an interruption since he managed to serve the term from start to finish. His full service should be counted in the application of the term limits [*Ong v. Alegre*, G.R. No. 163295

- (6) **Effect of Winning in an Election Protest:** The period during which the winner of an election protest is unable to assume office *as it was occupied by his opponent* is considered to be an involuntary interruption in the service of his term and therefore bars the application of the three-term limit rule. [*Abundo, Sr. v. COMELEC* (2013)]

POLITICAL LAW

**PUBLIC
INTERNATIONAL
LAW**

A. Concepts

Public International Law is a body of principles, norms and processes which regulate the relations of States and other international persons, and governs their conduct affecting the interests of the international community of States as a whole. [Magallona]

Private International Law is the body of rules of the domestic law of a State that is applicable when a legal issue contains a foreign element, and it has to be decided whether a domestic rule should apply foreign law or relinquish jurisdiction to a foreign court. [Aust]

	Public International Law	Private International Law
Sources	(1) Treaties and international conventions (2) Customary international law (3) General principles of law [ICJ Statute, art. 38(1)]	Domestic laws for legal issues containing foreign elements
Subjects	(1) States; (2) International organizations; (3) Individuals	Individuals (private persons)

A.1. OBLIGATIONS *ERGA OMNES*

a) **Definition:** Obligations *erga omnes* are "obligations of a State towards the international community as a whole," which are the "concern of all States" and for whose protection all States have a "legal interest." [Barcelona Traction Case (ICJ, 1970)]

	Obligations Erga Omnes	Obligations Inter Se
To whom owed	To the international community as a whole	To particular States
Standing	Violations may be espoused by any State	Violations may be espoused only by States specially affected by the breach

b) **Examples:** [Institut de Droit International ("IDI"), Resolution on Obligations *erga omnes* in International Law (2005)]

- (1) Prohibition of acts of aggression;
- (2) Prohibition of genocide;
- (3) Obligations concerning the protection of basic human rights [see also *Barcelona Traction Case* (ICJ, 1970)];
- (4) Obligations relating to self-determination [see also *East Timor Case* (ICJ, 1995); *Palestinian Wall Advisory Opinion* (ICJ, 2004)];
- (5) Obligations relating to the environment of common spaces.

c) **Standing to bring suit:** Other States have standing to bring a claim to the International Court of Justice or other international judicial institution in relation to a dispute concerning compliance with that obligation. [*Id.*, art. 4]

d) **Types:** Some authorities [e.g. IDI] classify *erga omnes* obligations into either: (1) *erga omnes omnium*, or (2) *erga omnes omnes partes* [see IDI, Resolution on Obligations *erga omnes* in International Law (2005), art. 1].

	<i>Erga Omnes Omnium</i>	<i>Erga Omnes Partes</i>
<i>Basis</i>	General international law	Multilateral treaty
<i>To whom owed</i>	The international community, in any given case	All the other States parties to the same treaty, in any given case
<i>Interest</i>	The common values of the international community and concern for compliance	The common values of States parties and their concern for compliance

N.B. The ICJ has not applied these distinctions in opinions where it discussed *erga omnes* obligations.

A.2. JUS COGENS

a) **Definition:** A *jus cogens* norm is a “norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” [Vienna Convention on the Law of Treaties (“VCLT”), art. 53]

Also known as peremptory norm of general international law.

b) Examples:

- (1) The prohibition against the use of force under the UN Charter [Nicaragua Case (ICJ, 1986)];
- (2) Law on genocide;
- (3) Prohibition against apartheid;
- (4) Self-determination;
- (5) Crimes against humanity;
- (6) Prohibition against slavery and slave trade;
- (7) Piracy [Brownlie, Magallona].

N.B. There is no authoritative listing of *jus cogens* norms and *erga omnes* obligations. Only the prohibition on the use of force has been declared by the ICJ as a *jus cogens* norm. Note that the decisions of the ICJ are not *per se* rules of international law.

c) **Treaties conflicting with *jus cogens* norms:** “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.” (i.e. a *jus cogens* norm) [VCLT, art. 53]

d) Notes:

- *Jus cogens* is different from *erga omnes*. (One is not even the subset of the other.) *Jus cogens* pertains to the non-derogability of a norm and the validity of rules and acts that conflict with it. *Erga omnes* pertains to the legal interest of a State in the violation of a norm.

A.3. CONCEPT OF EX AEQUO ET BONO

Literally, “what is equitable and good.” A standard that a court may apply to decide a case when the parties to the dispute so agree. [ICJ Stat., art. 38(2)] This means that the court may decide a case on the basis of justice and equity untrammelled by technical legal rules where the parties agree [Pellet]. This should not be confused with the ability of the ICJ to apply equitable principles in a case.

B. International and National Law

B.1. INTERNATIONAL AND NATIONAL (MUNICIPAL) LAW, DISTINGUISHED

	<i>International Law</i>	<i>Domestic Law</i>
<i>Scope</i>	The conduct of States and international organizations, their relations with each other and, in certain circumstances, their relations with persons, natural or juridical. [American Third Restatement]	Apply to a single country or nation, within a determined territory and its inhabitants.
<i>How made</i>	Through consent, adopted by States as a common rule of action.	Issued by a political superior for observance.
<i>Relations Regulated</i>	Regulates relations of States and other international persons.	Regulates relations of individuals among themselves or with their own States.
<i>Sources</i>	Derived principally from treaties, international custom and general principles of law. [ICJ Stat., art. 38(1)]	Consists mainly of enactments from the lawmaking authority of each State.
<i>Settlement of Disputes</i>	By means of State-to-State transactions.	By means of local administrative and judicial processes.
<i>Responsibility for Wrongful Acts</i>	Collective responsibility because it attaches directly to the State and not to its nationals.	Breach of domestic law entails individual responsibility.

B.2. RELATIONSHIP

a) Theories

Monist view

- International and municipal legal systems are fundamentally part of one legal order. This view considers international law to be superior, with municipal law being a mere subset of international law.
- Thus, international norms are applicable within municipal systems even without some positive act of the state.
- **Monist-naturalist view:** Public international law is superior to municipal law, and both systems are but a part of a higher system of *natural* law.

Dualist view

- International law and municipal law are separate systems. Only those problems affecting international relations are within the scope of international law.
- Thus, before an international norm can have an effect within a municipal legal system, that norm must be transformed, or adopted into the municipal system through a positive act by a state organ.
- Customary international law and general principles of international law, however, need not be transformed or adopted.

Coordinationist view

- International law and municipal law operate in different spheres. Hence, the laws themselves do not conflict.
- However, there may be a conflict in *obligations* imposed by either systems. In such a case, the result is not the invalidation of national law but responsibility under international law on the part of that State.

b) Role of international law within the national legal order

Norms or principles of international law may be incorporated or transformed into national

law and applied or enforced within the territorial jurisdiction of a state as part of “the law of the land.” [*Magallona*]

Doctrine of Incorporation: The Philippines adopts the “generally accepted principles of international law” as part of the law of the land [*CONST. art. II, sec. 2*]. They are deemed as **national law** whether or not they are enacted as statutory or legislative rules. [*Magallona*]

Doctrine of Transformation: Treaties or international agreements shall become valid and effective upon concurrence by at least two-thirds of all the Members of the Senate [*CONST. art. VII, sec. 21*]. These rules of international law are not part of municipal law unless they are transformed via legislation. [*Magallona*]

c) Role of national law in international legal regulation

A State cannot invoke its own national law to resist an international claim or excuse itself from breach of duty under international law [*VCLT, art. 6; Polish Nationals in Danzig Case (PCIJ, 1932); VCLOT; Articles on State Responsibility, art. 32*]

C. Sources

C.1. IN GENERAL

Primary sources

1. Conventional International Law: International conventions, whether general or particular, establishing rules expressly recognized by the contracting states (Treaties);
2. International Law: International custom, as evidence of a general practice accepted as law;
3. General Principles of Law: General principles of law recognized by civilized nations. [*ICJ Statute, art. 38(1)(a)-(c)*]

Notes:

- Art. 38 does not provide a hierarchy.

Subsidiary sources

4. Judicial decisions and teachings of the most highly qualified publicists of the various nations. [*ICJ Statute, art. 38(1)(d)*]
- While the primary sources *create* law, the subsidiary sources constitute *evidence* of what the law is.
 - There is no *stare decisis*: Case law is considered only a “subsidiary means.” Even the decisions of the ICJ itself do not create binding precedent, since it only binds the parties and in respect of the particular case [*ICJ Statute, art. 59*].
 - Teachings of publicists may include the work of organizations such as the International Law Commission (a UN body) and private institutions.

C.2. TREATIES AND CONVENTIONS

A **treaty** is an international agreement concluded between states in written form and governed by international law, whether

embodied in a single instrument or in two or more related instruments and whatever its particular designation.” [VCLT, art. 2(1)]

Treaty obligation is based on consent. No state may be bound by a treaty obligation unless it has so consented. [VCLT, art. 34]

Under the principle of *pacta sunt servanda*, a state party to a treaty is bound to comply with the obligations it assumed under such treaty in good faith. [VCLT, art. 26]

C.3. CUSTOMARY INTERNATIONAL LAW

Elements

Before a norm may become customary international law binding on all States, there must be:

- (a) State practice (that is general and consistent); and
- (b) *Opinio juris sive necessitates*, a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. [North Sea Continental Shelf Cases (ICJ, 1969)]

Unlike treaties, customary norms are legally binding upon all States regardless of whether they consent, subject to the persistent objector rule [*infra*].

No particular length of time is required for the formation of customary norms so long as the existence of the two elements of custom are manifest [North Sea Continental Shelf Cases (ICJ, 1969)]

The number of parties, the explicit acceptance of rules of law, and, in some cases, the declaratory nature of the provisions produces a strong law-creating effect at least as great as the general practice considered sufficient to support a customary rule [BROWNLIE].

(1) State practice:

- The practice must be consistent and general. However, consistency requires substantial uniformity and not necessarily

complete uniformity in practice [Asylum Case (ICJ, 1950)]. Generality likewise does not require universality.

- The absence of protest could be considered evidence of the binding nature of customary practice [AKEHURST].
- **Evidence:** The following acts may evidence state practice: (1) Diplomatic correspondence; (2) Policy statements; (3) Press releases; (4) Opinions of official legal advisers; (5) Official manuals on legal decisions (executive decisions and practices, and government comments on drafts by the ILC); (6) International and national judicial decisions; (7) Recitals in treaties and international instruments; (8) Practice of international organs [HARRIS].
- UN General Assembly resolutions are generally just recommendations. However, such resolutions may be an evidence of state practice that is relevant in the development of custom. [See Nicaragua Case (ICJ, 1986)]

(2) ***Opinio juris sive necessitates***: This refers to the belief on the part of states that a particular practice is required by law, and not because of courtesy or political expediency [North Sea Continental Shelf Cases (ICJ, 1969)].

- It is the existence of *opinio juris* that distinguishes binding custom from mere usage, from comity, and from courtesy or protocol.

Scope

Custom may be:

- (1) **General**, which is binding upon all or most states; or
 - (2) **Particular**, which is binding only between two or among a few states.
- The ICJ has recognized the possibility of **regional custom** [Asylum Case (ICJ, 1950)] and of **bilateral custom** [Right of Passage over Indian Territory Case (ICJ, 1960)].

(a) Principle of Persistent Objector

- When a State has continuously objected to a new customary norm at the time when it is yet in the process of formation, by such persistent objection the norm will not be applicable as against that state [MAGALLONA].
- For instance, the ten-mile rule (in the delimitation of territorial waters across bays) would appear to be inapplicable against Norway, inasmuch as she has always opposed any attempt to apply it to the Norwegian coast [Anglo-Norwegian Fisheries Case]

(b) Duality of norms

- It is possible for a norm of international law to exist both as a customary norm and a conventional norm [e.g., prohibition against the use of force]. Such norms are said to be of *dual character*.
- Norms of dual character come into being when (1) a treaty provision simply restates a customary norm; (2) a treaty provision constitutes evidence of custom; or (3) a treaty provision crystallizes into a customary norm.
- For a treaty provision to crystallize into custom, the provision must be *norm-creating or law-making*, creating legal obligations which are not dissolved by their fulfillment. [North Sea Continental Shelf Cases (ICJ, 1969)]
- The customary norm retains a separate identity even if its content is identical with that of a treaty norm. Thus, a State that cannot hold another State responsible for a breach of a treaty obligation can still hold the erring state responsible for the breach of the identical customary norm [Nicaragua Case (ICJ, 1986)].

(c) Philippine practice: Customary norms identified by the Supreme Court

1. Rules and principles of land warfare and of humanitarian law under the

Hague Convention and the Geneva Convention [Kuroda v. Jalandoni (1949)];

2. *Pacta sunt servanda* [La Chemise Lacoste v. Fernandez (1984)];
3. Human rights as defined under the *Universal Declaration of Human Rights* [Reyes v. Bagatsing (1983)];
4. The principle of restrictive sovereign immunity [Sanders v. Veridiano (1988)];
5. The principle in diplomatic law that the receiving state has the special duty to protect the premises of the diplomatic mission of the sending state [Reyes v. Bagatsing (1983)];
6. The right of a citizen to return to his own country [Marcos v. Manglapus (1989)];
7. The principle that "a foreign army allowed to march through friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from criminal jurisdiction of the place" [Raquiza v. Bradford (1945)];
8. The principle that judicial acts, not of a political complexion of a *de facto* government established by the military occupant in an enemy territory, are valid under international law [Montebon v. Director of Prisons (1947)];
9. The principle that private property seized and used by the enemy in times of war under circumstances not constituting valid requisition does not become enemy property and its private ownership is retained, the enemy having acquired only its temporary use [Noceda v. Escobar (1950)];
10. The principle that a State has the right to protect itself and its revenues, a right not limited to its own territory but extending to the high seas [Asaali v. Commissioner (1968)].

C.4. GENERAL PRINCIPLES OF LAW

These refer to those general principles in *municipal* law (particularly those of private law) that may be appropriated to apply to the relations of states [OPPENHEIM].

The following principles are considered general principles of international law:

- Roman law principles;
 - Principles such as estoppel, *res judicata*, *res inter alios acta*, and prescription;
 - e.g. With respect to estoppel, when Thailand did not object to, and has in fact benefited from, the Treaty of 1904 for 50 years, it is deemed to have accepted said treaty. It is thereby *precluded* from questioning Annex I thereof, which showed that the Temple of Preah Vihear was within Cambodian territory [Temple of Preah Vihear Case (ICJ, 1962)].
- Other substantive principles, such as the duty to make reparations [Chorzow Factory Case (PCIJ, 1927)], principle of reciprocity, *pacta sunt servanda*, separate corporate personality [see Barcelona Traction Case (ICJ, 1970)];
- Procedural rules, such as rules governing the use of circumstantial and hearsay evidence are likewise so considered.
 - e.g. *Press reports* can be used to corroborate the existence of a fact. When they demonstrate matters of public knowledge which have received extensive press coverage, they can be used to prove a fact to the satisfaction of the court [Nicaragua Case (ICJ, 1986)].
 - *Circumstantial evidence* is admitted as indirect evidence in all systems of law and its use is recognized by international decisions. Such circumstantial evidence, however, must consist of a series of facts or events that lead to a *single* conclusion [Corfu Channel Case (ICJ, 1949)].
- *Jurisdictional principles*, such as the power of a tribunal to determine the

extent of its own jurisdiction (*competence de la competence*).

C.5. JUDICIAL DECISIONS AND TEACHINGS OF HIGHLY QUALIFIED PUBLICISTS

Evidence of the state of the law:

Despite the inapplicability of *stare decisis* in the ICJ, decisions of international tribunals exercise considerable influence as impartial and well-considered statements of the law by qualified jurists made in light of actual problems.

Decisions of international tribunals constitute evidence of the state of the law. (BROWNLIE)

Writings of highly qualified publicists likewise constitute evidence the state of the law.

Caveat: Some publicists may be expressing not what the law is (*lex lata*) but what they think the law should be or will be (*lex ferenda*).

C.6. NON-SOURCES

The following are not sources of international law, but may be used by the ICJ in particular to decide a case.

- **Ex aequo et bono** is a standard of "what is equitable and good," which the Court may apply (in place of the sources of international law) to decide a case when the parties to the dispute so agree. [ICJ Stat., art. 38(2)]
- **Equity** refers to the application of standards of justice that are not contained in the letter of existing law. It has often been applied in cases involving territorial disputes and maritime delimitations.
- **Unilateral declarations** concerning legal or factual situations, may have the effect of creating legal obligations. Nothing in the nature of a *quid pro quo*, nor any subsequent acceptance, nor even any reaction from other states is required for such unilateral declaration to take effect. Verily, unilateral declarations bind the state that makes them. [Nuclear Test Cases (ICJ, 1974)].

D. Subjects

Enumeration

- (1) States
- (2) International organizations
- (3) Individuals

SUBJECTS AND OBJECTS DISTINGUISHED

Subjects of international law refer to entities:

- (1) Capable of possessing international rights and duties; and
- (2) Having the capacity to maintain these rights by bringing international claims. [*Reparations for Injuries Advisory Opinion (ICJ, 1949)*]

Objects of international law are persons or things in respect of which rights are held and obligations are assumed by the subject. They are not directly governed by the rules of international law. Their rights (e.g., human rights of individuals) may be asserted and their responsibilities imposed indirectly, through the instrumentality of an intermediate agency (e.g., state).

This traditional distinction has been criticized as unhelpful as non-state actors (e.g., individuals and civil society organizations) already have standing to bring suits in the fields of international criminal law and international human rights law. Thus, some call the entities actors. [HIGGINS]

OBJECTIVE AND SPECIAL PERSONALITY

Objective (general) international personality exists wherever the rights and obligations of an entity are conferred by general international law (e.g., states).

The United Nations has objective international personality. [*Reparations for Injuries Advisory Opinion (ICJ, 1949)*]

Special (particular) international personality exists where an entity is established by particular states for special purposes.

D.1. STATES

Elements of Statehood: The state as a person of international law should possess the following qualifications:

- (a) a permanent population;
- (b) a defined territory;
- (c) government; and
- (d) capacity to enter into relations with the other states. [*Montevideo Convention on the Rights and Duties of States (1933), art. 1*]

Definition: There is no standard definition of what the State is in international law. The *Montevideo Convention* merely enumerates the elements by which one may say that a state exists.

States remain the most important actors in international law. They possess objective or *erga omnes* personality.

a) Elements of Statehood

i. Permanent Population

The population does not have to be homogeneous racially, ethnically, tribally, religiously, linguistically, or otherwise. But, it must be a settled population, although the presence of certain nomadic inhabitants does not matter. [AUST]

ii. Defined Territory

Definition: State territory is that defined portion of the surface of the globe which is subjected to the sovereignty of the State. [OPPENHEIM]

A state must exercise control over a certain area. It need not be exactly defined by metes and bounds, so long as there exists a

reasonable certainty of identifying it. No minimum land area is required.

Modes of acquiring territory: There are four modes of acquiring territory. The first two are original modes while the last two are derivative modes.

- (1) Occupation;
- (2) Accession or accretion;
- (3) Cession; *and*
- (4) Prescription.

Occupation

Occupation refers not to mere discovery, but to effective exercise of sovereignty over a territory which is *terra nullius* (i.e., not subject to the sovereignty of any other state).

Occupation is different from *conquest*, which is the taking of a territory of another sovereign by force of arms. Conquest is generally accepted to have been outlawed as aggression and violative of the prohibition on the use of force and territorial integrity. [See *Definition of Aggression*, UN GA Res. 3314 (XXIX) (1974)]

Effective occupation means continued display of authority. It involves (1) the intention and will to act as sovereign or *animus occupandi*; and (2) some actual exercise or display of such authority [Eastern Greenland Case (PCIJ, 1933)].

Animus occupandi must be demonstrated and evidenced by some administrative or political acts in relation to the territory in question and such acts must be under *titre de souverain* (title of sovereignty).

To constitute effective occupation, exercise of sovereignty must be peaceful, actual, continuous and sufficient to confer valid title to sovereignty.

Prescription

Through prescription, title is acquired by continuous and undisturbed exercise of sovereignty over a period of time.

Requisites: Possession must be:

- (1) Exercised under *titre de souverain*;
- (2) Peaceful and uninterrupted;
- (3) Public; *and*
- (4) Endure for a certain length of time [JOHNSON]

Occupation and Prescription; Distinguished

Occupation is the acquisition of territory that is *terra nullius* by any State which has the intention to claim sovereignty and occupies that territory by exercising effective and continued control.

In contrast, **prescription** is the acquisition of territory that is not *terra nullius*, obtained by means that may initially have been of doubtful legality but is uninterrupted and uncontested for a long time. Timely protests by the 'former' sovereign will usually bar the claim. [Aust]

Accession or accretion

Accession or accretion is the natural process of land formation resulting in the increase of territory.

Cession

Cession means the transfer of territory from one state to another by treaty (derivative). It is the only bilateral mode of acquiring territorial sovereignty.

The validity of cession depends on the valid title of the ceding state. The cessionary state cannot have more rights than what the ceding state possessed. [MAGALLONA].

iii. Government

Government is the physical manifestation of a state. Government must be organized, exercising control over and capable of maintaining law and order within its territory.

Under the rules on succession of States, even changes of entire governments do not affect the identity and personality of the state. Once statehood is established, neither invasion nor

disorder alone can remove its character as a state [BROWNIE].

Effective government

General Rule: There must be a central government operating as a political body within the law of the land and in effective control of the territory. [AUST]

Exception: The requirement of effective government is not strictly applied when the State, already long-existing, happens to undergo a period of civil strife or internal chaos due to natural disaster or invasion.

Failed State: One which has not had a government in control of most of the territory for several years. [AUST] A failed State does not cease to be a State. (See, e.g. Somalia, which has not had an effective government in years, but continues to be recognized by the UN).

Further, some States were deemed States even before their governments were very well-organized (e.g., Poland, Burundi, and Rwanda).

Governments de facto and de jure

- **Government de jure:** Government from law, that is, one with a color of legitimacy.
- **Government de facto:** One that governs without a mandate of law. So long as it is in place, it may command obedience from the inhabitants of the occupied area. The *de facto* ruler may suspend laws and enact new ones.

Kinds of De Facto Governments

1. **De facto Proper / Government by Revolution:** That which usurps, either by force or the will of the majority, the legal government and maintains control against it;
2. **Government by paramount force / Government by Occupation:** Results from the occupation of a state or a part

thereof by invading forces in time of war; and

3. **Government by Secession:** Government established as an independent government by inhabitants of a country who rise in insurrection against the parent state. [See *Co Kim Cham v. Valdez Tan Keh* (1945)]

Jus Postlimium: Acts (executive, legislative, and judicial) done under the control of a *de facto* government, when they are not of a political complexion remain good even upon the restoration of the legitimate government. [See *Co Kim Cham v. Valdez Tan Keh* (1945)]

- Conversely, the establishment of a *de facto* government does not by itself abolish all laws and structures established by the deposed government. Only laws of political nature affecting political relations are suspended *ipso facto*; laws that enforce public order and regulate social and commercial life remain in effect unless they are changed by the *de facto* sovereign.

iv. Capacity to enter into relations with the other states

- A state must be free from outside control in conducting foreign and internal affairs, i.e. **sovereign and independent.**
- It is sufficient for a State to possess **external appearance of capacity** to enter into international relations. [BROWNIE] That a State may be acting under the direction of another State does not affect this requirement. [See *Treaty of Friendship (Ind. and Bh.)*, where Bhutan agreed to be guided in its external relations by Indian advice.] [AUST]

b) Concepts on Creation of States

i. Effectiveness

The issue of possession of the status of a state (statehood) under international law, traditionally defined as “effectiveness,” is

closely linked to the concept of sovereignty, although the latter is not itself a criterion for statehood. Instead, it is the “totality of international rights and duties recognized by international law” as embodied in an independent territorial unit that is the state. In other words, an entity endowed with statehood has sovereignty, but sovereignty itself is not a precondition but only an attribute, or “an incident or consequence of statehood.”

ii. Declaration of independence

General Rule: International law contains to prohibition on declarations of independence.

Exception: If the declaration is connected with (1) the unlawful use of force or (2) other egregious violations of *jus cogens* norms.

Hence, the Kosovo declaration of independence did not violate general international law just because it was unilateral. [*Kosovo Advisory Opinion (ICJ, 2008)*]

iii. Right to self-determination

Internal self-determination vs. External self-determination:

- Through **internal** self-determination, the state recognizes a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.
- A right to **external** self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances. [*Akbayan v. Aquino (2008, on the MOA-AD)* citing *In re Secession of Quebec (Can., 1998)*]

Secession: Secession is the effort of a group or section of a state to withdraw itself from the political and constitutional authority of that state, with a view to achieving statehood

for a new territorial unit on the international plane. [*In re Secession of Quebec (Can., 1998)*]

Grounds for Secession

1. Colonization;
2. Alien subjugation, domination, or exploitation outside the colonial context;
3. **Remedial Secession:** When a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession. [*In re Secession of Quebec (Can., 1998)*]
 - This ground may take the form of massive human rights violations or inadequate political representation.
 - However, it remains unclear whether this third ground actually reflects an established international law standard (or is merely *lex ferenda*). [*In re Secession of Quebec (Can., 1998)*]

c) Recognition

Concept

- **Recognition** is an act by which a state acknowledges the existence of another state, government or belligerent community and indicates willingness to deal with the entity as such under international law.
- **Not a legal duty:** As a public act of state, recognition is an optional and political act and there is no legal duty in this regard.

Two views:

1. **Declaratory School:** Recognition is a mere declaration or acknowledgement of an *existing* state of law and fact, legal personality having been previously conferred by operation of law. This is the prevailing view.
2. **Constitutive School:** The political act of recognition is a precondition to the existence of legal rights of a state. In its logical extreme, this is to say that the very personality of a state depends on the

political decision of other states. This is the minority view. [BROWNLIE]

Legal functions

The typical act of recognition has two legal functions:

1. **Evidence of statehood:** The determination of statehood as a question of law which may have evidential effect before a tribunal; *and*
2. **Establishment of relations:** A condition of the establishment of formal, optional, and bilateral relations, including diplomatic relations and the conclusion of treaties. [BROWNLIE]

Effects

1. Establishment of diplomatic relations;
2. Grant of right to sue in courts of recognizing state;
3. Grant of right to possession of properties of predecessor in the recognizing state;
4. Retroactive validity: All acts of the recognized state or government are validated retroactively, preventing the recognizing state from passing upon their legality in its own court.

Doctrines on Recognition of De Facto Governments

1. **Wilson/Tobar Doctrine:** Also known as "Doctrine of Legitimacy" or "Policy of Democratic Legitimacy." Holds that governments which came into power by extra-constitutional means [e.g. revolution, civil war, coup d'état or other forms of internal violence] should not be recognised, at least until the change had been accepted by the people. [After *US President Wilson, 1913 and Ecuadorian FM Tobar (1907)*]
2. **Stimson Doctrine:** Doctrine of not recognizing any situation, treaty or agreement brought about by non-legal means. Precludes recognition of any government established as a result of

external aggression. [After *US Sec. of State Henry Stimson (1932)*]

3. **Estrada Doctrine:** Automatic recognition of governments in all circumstances. Posits that dealing or not dealing with the government established through a political upheaval is not a judgment on the legitimacy of the said government. [After *Mexican Minister Genaro Estrada (1930)*] [SHAW]

2. International Organizations

Generally, special personality: The status and powers of an international organization is determined by agreement and not by general or customary international law. They are considered subjects of international law "if their legal personality is established by their constituent instrument."

Further, its constituent rights and duties, or capacities and immunities, are limited to those set forth in the treaty creating the international organization. Thus, legal personality in this context is a relative concept. [MAGALLONA]

Exception: United Nations: The United Nations has objective international personality. Its personality is binding on the whole international community, including States who are not UN members. [Reparations for Injuries Advisory Opinion (ICJ, 1949)]

Preconditions for international personality

1. It must constitute a *permanent* association of states, with lawful objects, equipped with organs;
2. There must be a *distinction*, in terms of legal powers and purposes, between the organization and its member states; *and*
3. It must have legal powers that it may exercise on the *international plane* and not solely within the national systems of one or more states. [BROWNLIE]

Capacity to bring claim for reparation

of the United Nations

- As the “supreme type of international organization,” the UN must be deemed to have such powers which, though not expressly granted in its Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.
- Thus, though the UN Charter did not expressly clothe the UN with the capacity to bring an international claim for reparations, the UN nevertheless possessed functional personality. [*Reparations for Injuries Advisory Opinion (ICJ, 1949)*]

and liabilities upon individuals as well as upon states.

- e. *Convention on the Prevention and Punishment of the Crime of Genocide, art. VI* defined “parties charged with genocide” as including individuals. [*MAGALLONA*]
- f. The International Criminal Court has jurisdiction over individuals who commit genocide, crimes against humanity and war crimes, subject to conditions under the ICC Statute. [*ICC Stat., art. 25(1) in relation to art. 5*]

3. Individuals

- **Special personality:** Individuals may assume the status of subjects of international law only on the basis of agreement by states and in specific context, not in accordance with general or customary international law.

Examples

- a. *UNCLOS, art. 187(c)-(e)* provides for jurisdiction of the Sea-Bed Disputes Chamber of the ITLOS over disputes between parties to contracts relating to the exploitation of marine resources. Parties to such contracts may be natural or juridical persons.
- b. The *Claims Settlement Declaration of 1981* between US and Iran provides for direct access to the Iran-US Claims Tribunal to individuals for the settlement of their claims involving more than \$250,000 either against Iran or the US.
- c. The Mixed Claims Tribunals established in the *Treaties of Peace* concluded at the end of World War I provided for *locus standi* of individuals in actions against states relating to contracts, debts, and property adversely affected by the war.
- d. The *London Agreement of the International Military Tribunal at Nuremberg*, relating to crimes against peace, war crimes and crimes against humanity, imposed duties

E. Diplomatic and Consular Law

E.1. DIPLOMATIC INTERCOURSE

Diplomatic intercourse, also referred to as the **right of legation**, is the right of a state to send and receive diplomatic missions, which enables states to carry on friendly intercourse.

Diplomatic **relations** and diplomatic **missions** are separately established by mutual consent. [See *Vienna Conv. on Diplomatic Rel. ("VCDR")*, art. 2]

A State may have diplomatic relations without a diplomatic mission, e.g. through non-resident ambassadors. [MAGALLONA]

a) Agents of diplomatic intercourse

i. Head of state

The head of State represents the sovereignty of the State, and enjoys the right to special protection for his physical safety and the preservation of his honor and reputation.

Upon the **principle of extraterritoriality**, his quarters, archives, property and means of transportation are inviolate.

He is immune from criminal and civil jurisdiction, except when he himself is the plaintiff, and is not subject to tax or exchange or currency restrictions.

ii. Foreign office

The body entrusted with the conduct of actual day-to-day foreign affairs.

It is headed by a secretary or a minister who, in proper cases, may make binding declarations on behalf of his government [Eastern Greenland Case (PCIJ, 1933)]

iii. Diplomatic corps

This refers to the *collectivity of all diplomatic envoys* accredited to a state composed of:

1. Head of mission, classified into:
 - a) Ambassadors *or nuncios*, accredited to heads of state, and other heads of mission of equivalent rank;
 - b) Envoys, Ministers *and Internuncios*, accredited to heads of state;
 - c) *Charges d'affaires*, accredited to Ministers of Foreign Affairs;
2. Diplomatic staff, engaged in diplomatic activities and are accorded diplomatic rank;
3. Administrative and technical staff, those employed in the administrative and technical service of the mission;
4. Service staff, engaged in the domestic service of the mission. [NACHURA]

In the Philippines, the President appoints, sends and instructs the diplomatic and consular representatives. [CONST. art. VII, sec. 16]

b) Functions and duties of agents

1. Represent the sending State in the receiving State;
2. Protect in the receiving State the interests of the sending State and its nationals, within the limits allowed by international law;
3. Negotiate with the government of the receiving State;
4. Ascertain, by all lawful means, the conditions and developments in the receiving State and reporting the same to the sending State;
5. Promote friendly relations between the sending State and receiving State, and developing their economic, cultural and scientific relations. [VCDR, art. 3(1)]
6. If diplomatic relation is severed, entrust the protection of its nationals to the diplomatic mission of a third state acceptable to the receiving state. [VCDR, art. 45]

7. May protect the interest of a third State by agreement with the receiving State, if there is no diplomatic relations between the third state and the receiving state. [VCDR, art. 46] [MAGALLONA]

b. Immunities and privileges

Theoretical bases: Diplomatic immunities and privileges have been justified under the following theories:

1. **Extraterritoriality theory:** The premises of the diplomatic mission represent a sort of extension of the territory of the sending State.
2. **Representational theory:** The diplomatic mission personifies the sending State.
3. **Functional necessity theory:** The privileges and immunities are necessary to enable the diplomatic mission to perform its functions. [MAGALLONA] This theory was adopted by the ILC when it drafted the draft articles of the VCDR. [*Id.*]

i. Personal inviolability

Aspects

1. The duty of the receiving State to refrain from exercising its sovereign rights, in particular law enforcement rights against the diplomat;

General rule: The diplomatic representative shall not be liable to any form of arrest or detention.

Exception: The diplomatic envoy may be **arrested temporarily in case of urgent danger**, such as when he commits an act of violence which makes it necessary to put him under restraint for the purpose of preventing similar acts. [*Diplomatic and Consular Staff in Tehran Case (ICJ, 1980)*].

2. The duty to treat him with due respect and protect his person, freedom or dignity from physical interference by other persons. [VCDR, art. 22]

- The receiving State shall treat him with due respect and take all steps to prevent any attack on his person, freedom or dignity [VCDR. art. 29].

Scope: The inviolability of a diplomatic agent covers:

1. His private residence;
2. Papers and correspondence;
3. Property, generally.

ii. Inviolability of premises of the mission and archives

This consists of two elements:

1. The duty of the receiving state to refrain from entering the premises, except with the consent of the head of the mission; and
 2. The special duty of the receiving state to protect the premises against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
- The principle of inviolability continues to apply even if diplomatic relations are broken off, or if a mission is permanently or temporarily recalled. In that case, the receiving state must respect and protect the premises of the mission, together with its property and archives. [VCDR, art. 45]
 - **“Premises of the mission”** mean the buildings or parts of the buildings and the land ancillary thereto used for the purposes of the mission including the residence of the diplomatic agent. [VCDR, art. 30] This is irrespective of the ownership of the premises [MAGALLONA, citing ILC Yearbook]
 - **The inviolability of the premises appears to be absolute.** [SHAW] **The envoy must consent to such entry.** Such premises cannot be entered or searched, and neither can the goods, records and archives be detained by local authorities even under lawful process. Portions of the draft VCDR which provided

an exception for emergencies were rejected.

- Also, the service of writs, summons, orders or processes within the premises of mission or residence of the envoy is prohibited. Even if a criminal takes refuge within the premises, the peace officers cannot break into such premises to apprehend the same.
 - The fugitive should, however, be surrendered upon demand by local authorities, *except* when the right of asylum exists.

iii. Right to official communication

The envoy is entitled to fully and freely communicate with his government.

1. The receiving state shall permit and protect free communication on the part of the mission for all official purposes;
2. The mission may employ all appropriate means to send and receive messages by any of the usual modes of communication or by diplomatic courier, which shall enjoy inviolability;
3. The official correspondence of the mission is inviolable; *and*
4. The diplomatic bag shall not be opened or detained [VCDR, art. 27].

iv. Immunity from local jurisdiction

Persons entitled

1. **Diplomatic agent and family:** Diplomatic agent and members of the family of the diplomatic agent forming part of his household, who are not nationals of the receiving state;
2. **Administrative and technical staff:**
 - *As to criminal jurisdiction*, members of the administrative and technical staff of the diplomatic mission, as well as members of their families forming part of their respective households, who are *not nationals of or permanent residents in the receiving state*;

- *As to civil and administrative jurisdiction*, immunity shall not extend to acts performed outside the course of their duties; *and*

3. **Service staff:** Members of the service staff of the diplomatic mission, who are *not nationals of or permanent residents in the receiving state*, with respect to acts performed in the course of their duties [VCDR, art. 37].

Duration of immunities and privileges

- **Beginning:** From the moment the person *enters* the territory of the receiving state to take up his post;
- **End:** When he (a) *exits* the country, or (b) upon expiration of a reasonable period in which to leave the country. [VCDR, art. 39]

Waiver of immunity from jurisdiction

In proceedings, whether criminal, civil or administrative, the waiver must be (1) made by the sending State itself and (2) express. [VCDR, art. 32]

State practice indicates that the authority to exercise the waiver rests with the *sovereign organs*, and not the diplomatic agent or official himself. [MAGALLONA]

Criminal jurisdiction

- A diplomatic agent enjoys immunity from *criminal* jurisdiction of the receiving State [VCDR, art. 31].
- He may not be arrested, prosecuted, prosecuted or punished for any offense he may commit, unless his immunity is waived.
- This privilege, however, only exempts a diplomatic agent from local jurisdiction. It does not import immunity from legal liability.

Civil and administrative jurisdiction

General rule: The diplomatic agent enjoys immunity from the *civil and administrative*

jurisdiction of the receiving state, even with respect to his *private* life. [VCDR, art. 31]

Exceptions:

1. A real action relating to private immovable property situated in the territory of the receiving state, *unless* he holds it in behalf of the sending state for the purposes of the mission;
 2. An action relating to succession in which the diplomatic agent, involved as executor, administrator, heir or legatee, as a private person and not on behalf of the sending state;
 3. An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions. [VCDR, art. 31(1)]
- His properties, however, are not subject to garnishment, seizure for debt, execution and the like.
 - **Cannot be compelled to give evidence:** The diplomatic agent also cannot be compelled to testify, not even by deposition, before any judicial or administrative tribunal in the receiving state without the consent of his government.

Exemption from taxes and customs duties

General rule:

1. *As to the sending state*, exemption applies to the "premises of the mission" whether owned or leased, with respect to "all national, regional or municipal dues and taxes" [VCDR, art. 32].
2. *As to diplomatic agents*, they are exempt from all *dues and taxes*, whether personal or real, national, regional or municipal. [VCDR, art. 34]
 - He is also exempt from all customs duties of articles for the official use of the mission and those for the personal use of the envoy or members of the family forming part

of his household, including articles intended for his establishment.

- Baggage and effects are entitled to free entry and are usually exempt from inspection.

Exceptions:

1. *As to the sending state*, exemption does *not* include dues or taxes which represent payment for specific services rendered. [VCDR, art. 23(1)]
2. *As to diplomatic agents*, the following are not included:
 - a. Indirect taxes incorporated in the price of goods purchased or services availed;
 - b. Dues and taxes on private immovable property situated in the receiving state;
 - c. Estate, succession or inheritance taxes levied by the receiving state;
 - d. Dues and taxes on private income sourced within the receiving state;
 - e. Capital taxes on investments in commercial ventures in the receiving state;
 - f. Charges levied for specific services rendered;
 - g. Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property. [VCDR, art. 34]

Who are entitled to tax exemptions:

1. **Diplomatic agent and household:** Members of the family of the diplomatic agent forming part of his household, who are not nationals of the receiving state;
2. **Administrative and technical staff:** Members of the administrative and technical staff of the diplomatic mission, as well as members of their families forming part of their respective households, who are not nationals of or

permanent residents in the receiving state;

3. **Service staff:** Members of the service staff of the diplomatic mission, who are not nationals of or permanent residents in the receiving state, with respect to emoluments they receive by reason of their employment;
4. **Private servants:** Private servants of members of the mission if they are not nationals or permanent residents of the receiving state, with respect to emoluments they receive by reason of their employment. [VCCR, art. 37]

2. Consular relations

The relations which come into existence between two States by reason of the fact that consular functions are exercised by authorities of one State in the territory of the other. (*Magallona*)

a. Establishment and severance

- Consular relations are established by mutual consent. [*Vienna Convention on Consular Relations* ("VCCR"), art. 2]
- The consent given to the establishment of diplomatic relations between two States implies consent to the establishment of consular relations, *unless* otherwise stated. [*Id.*]
- But the severance of diplomatic relations shall not *ipso facto* involve the severance of consular relations. [*Id.*]
- The above are rules of customary international law. [*MAGALLONA, citing ILC*]

b. Consuls

Consuls are state agents residing abroad mainly for the following purposes:

1. In the interest of commerce and navigation;

2. Issuance of *visa* (permit to visit his country); and

3. Such other functions as are designed to protect nationals of the appointing state. [VCCR, art. 9]

c. Ranks

1. **Consul general** heads several consular districts, or one exceptionally large consular district;
2. **Consul** is in charge of a small district or town or port;
3. **Vice Consul** assists the consul;
4. **Consular agent** is one entrusted with the performance of certain functions by the consul.

d. Consular Functions

Consular functions include the following:

1. Protecting the interests of the sending state in the territory of the receiving state;
2. Protecting and assisting the nationals of the sending state;
3. Furthering the development of commercial, economic, cultural and scientific relations between the sending state and the receiving state and promoting friendly relations between them;
4. Ascertaining by all lawful means the conditions and developments in the commercial, economic, and cultural and scientific life of the receiving state, reporting thereon to the government of the sending state, and giving information to persons interested;
5. Issuing passports and travel documents to nationals of the sending state and *visas* and travel documents to persons wishing to travel to the sending state;
6. Acting as notary, civil registrar and similar administrative capacities; *and*
7. Exercising rights of supervision and inspection pertaining to the sending state

as flag state and state of registry of aircraft.

e. Right to Consular Assistance

- **Diplomatic protection:** The right of a state to claim rights for its nationals abroad.
- States have a positive duty to accord consular privileges to sending states whose nationals have run into trouble in the jurisdiction of the receiving states. [*Avena Case (ICJ, 2004)* and *LaGrand Case (ICJ, 2001)*]

See VCCR, art. 36(1), which gives consular officers the right to communicate with nationals of the sending state and to have access to them, and give consular officers the right to visit a national of the sending state who is in prison, custody or detention. [*LaGrand Case (ICJ, 2001)*]

- Hence, the duty of the (sending) state is to ensure that other states treat their nationals abroad in a manner that complies with human standards recognized under the *International Covenant on Civil and Political Rights*, among others documents.
- N.B. However, the VCCR violation does not automatically result in the partial or total annulment of conviction or sentence. [*Avena Case (ICJ, 2004)*]

f. Necessary documents

The following documents are necessary for the assumption of consular functions:

1. **Letters patent (*letter de provision*):** The letter of appointment or commission which is transmitted by the *sending* state to the Secretary of Foreign Affairs of the country where the consul is to serve; [VCCR, art. 11] and
2. **Exequatur:** The authorization given to the consul by the sovereign of the *receiving* State, allowing him to exercise his function within the territory. [VCCR, art. 12(1)]

- The receiving State may refuse to give an exequatur and is not required to give its reasons for refusal. [VCCR, art. 12(2)]

g. Immunities and privileges

i. Personal inviolability

Personal inviolability of consular officials means that:

1. They are not liable to arrest or detention pending trial, except in case of a grave crime and pursuant to a decision of a competent judicial authority.
2. They shall not be committed to prison nor be subject to any other form of restriction to personal freedom, except in the case of grave crime pursuant to a decision of competent judicial authority, or in the execution of a final judicial decision. [VCCR, art. 41]

ii. Inviolability of consular premises

Inviolability of the consular premises has the following scope:

1. Authorities of the receiving state shall not enter that part of the consular premises exclusively used for consular work, *except* with the consent of the head of the consular post, his designee, or the head of the diplomatic mission; but consent of the consular head may be assumed in case of fire or other disaster requiring prompt protective action;
 - Note that this “assumed consent” is not available as to the inviolability of the premises of the *mission*.
2. The receiving state has the special duty to take all appropriate steps to protect the consular premises against intrusion or damage and to prevent any disturbance of peace of the consular post or impairment of its dignity;
3. Consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from

any form of requisition for purposes of national defense or public utility;

4. In case of consular premises, their furnishings, the property of the consular post and its means of transport are expropriated for national defense or public utility, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending state. [VCCR, art. 37]

Consular premises refer to “the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of consular post.” Also, consular premises have:

1. Exemption from local jurisdiction for offenses committed in the discharge of *official* functions, but *not* for other offense, *except* for minor infractions;
2. Exemption from testifying on official communications or on matters pertaining to consular functions;
3. Exemption from taxes, customs duties, military or jury service;
4. Personal inviolability of consular officials.

iii. Inviolability of archives

The inviolability of archives is unconditional. They shall be inviolable at all times and wherever they may be. [VCCR, art. 33]

iv. Freedom of communication

1. The receiving state shall permit and protect freedom of information on the part of the consular post for all official purposes;
2. In communicating with the government, the diplomatic missions and other consular posts of the sending state, the consular post may employ all appropriate means, including diplomatic or consular bags and messages in code or cipher;

3. The official correspondence of the consular post shall be inviolable;
4. The consular bag shall neither be opened nor detained. [VCCR, art. 35]

The receiving state may, however, request that the consular bag be opened if the authorities have serious reasons to believe that the bag contains something other than correspondence, documents or articles intended exclusively for official use.

1. *If the request is accepted*, the bag may be opened in the presence of the authorized representative of the sending state;
2. *If the request is refused*, the bag shall be returned to its place of origin. [VCCR, art. 35]

v. Immunity from local jurisdiction

General rule: Consular officers and employees are entitled to immunity from the jurisdiction of administrative and judicial authorities in the receiving state.

Exceptions: This immunity shall not apply to a civil action either:

1. Arising out of a contract by a consular officer or employee, which he did not conclude expressly or impliedly as an agent of the sending state; *or*
2. By a third party for damage arising from an accident caused by vehicle, vessel or aircraft in the receiving state. [VCCR, art. 43]

F. Treaties

F.1. CONCEPT

i. UNDER INTERNATIONAL LAW

A treaty is:

1. An international agreement;
2. Concluded between states;
3. In written form;
4. Governed by international law;
5. Whether embodied in a single instrument or in two or more related instruments; *and*
6. Whatever its particular designation [VCLT, art. 2(1)]

Under the VCLT, the term “treaty” includes all agreements between states, *regardless* of how they are called. Thus, for purposes of international law, treaties, executive agreements, exchanges of notes, etc., are all treaties.

N.B. The definitions under the VCLT are “without prejudice to the use of those terms or to the meanings which may be given to them in the internal law of any State.” [VCLT, art. 2(2)]

ii. UNDER PHILIPPINE LAW

Philippine law, however, makes a distinction between treaties and executive agreements. Both are equally binding, but treaties require the concurrence of the Senate to be effective.

<i>Treaty</i>	<i>Executive agreements</i>
<i>Subject matter</i>	
(1) Political issues, (2) changes in national policy, (3) involves agreements of a permanent character	(1) Transitory effectivity, (2) adjusts details to carry out well-established national policies and traditions, (3) temporary, (4) implements treaties, statutes, policies
<i>Ratification</i>	
Requires ratification by the two-thirds (2/3) of the Senate to be valid and effective [CONST. art. VII, sec. 21]	Does not require concurrence by Senate to be binding

Thus, treaties have to be transformed in order to be part of Philippine law. A treaty is “transformed” when it is ratified by the Senate. [CONST. art. VII, sec. 21] After ratification, a treaty shall be deemed as if legislated by our legislature.

iii. EXECUTIVE AGREEMENT UNDER PHIL. LAW

Agreements concluded by the President which fall short of treaties are commonly referred to as executive agreements and are no less common in our scheme of government than are the more formal instruments: treaties and conventions. They sometimes take the form of exchange of notes and at other times that of more formal documents denominated “agreements” or “protocols.”

- Contrasted with treaties, an executive agreement (a) does not require legislative concurrence; (b) is usually less formal; and (c) deals with a narrower range of subject matters.

- Despite these differences, to be considered an executive agreement, the following three requisites provided under the Vienna Convention must nevertheless concur: (a) the agreement must be between states; (b) it must be written; and (c) it must be governed by international law. [*Bayan Muna v. Romulo (2011)*]

Examples of Executive Agreements

- A loan agreement, coupled with an exchange of notes between two governments, constitutes an executive agreement. The exchange of notes indicated that the two governments have reached an understanding concerning Japanese loans to be extended to the Philippines and that these loans were aimed at promoting our country's economic stabilization and development efforts. [*Abaya v. Ebdane (2007)*, where the Court applied the definition of "treaty" in the VCLT]
- In contrast, The contract between Northrail and CNMEG (the Chinese contractor) is therefore not an executive agreement because (1) by the terms of the contract agreement, both Northrail and CNMEG entered into the contract agreement as entities with personalities distinct and separate from the Philippine and Chinese governments, respectively; and (2) the contract agreement itself expressly stated that it is to be governed by Philippine law, while as defined in the VCLT, a treaty or an executive agreement is governed by international law. [*China National Machinery & Equipment Corp. v. Sta. Maria (2012)*]

Requisites for validity

1. Treaty making capacity, which is possessed by all states as an attribute of sovereignty. International organizations also possess treaty-making capacity, although limited by the organization's purpose;

2. Competence of the representative/organ making the treaty, which may be the head of state, which generally has *full powers*, or other persons called *plenipotentiaries*, which must produce an instrument showing authority to sign a treaty binding their government;
3. Consent freely given by the parties. If consent was given erroneously, or was induced by fraud, the treaty shall be *voidable*;
4. Object and subject matter, which must be lawful;
5. Ratification in accordance with the constitutional process of the parties concerned.

In addition to the constitutional requirement, ratification is necessary under international law when:

1. The treaty provides for consent to be expressed by means of ratification;
2. It is otherwise established that the negotiating states agreed that ratification should be required;
3. The representative of the state has signed the treaty subject to ratification [*VCLT, art. 14(1)*], that is, when the intent was to make it subject to ratification.

Under the Philippine law, the power to ratify is vested in the President, subject to the concurrence of the Senate. The role of the Senate is limited only to giving or withholding its consent, or concurrence, to the ratification. Although the refusal of a state to ratify a treaty which has been signed in its behalf is a serious step that should not be taken lightly, such decision is within the competence of the President alone, which cannot be encroached by Supreme Court *via* a writ of *mandamus* (*Pimentel v. Executive Secretary (2005)*).

Treaty-making process

1 *Negotiation.* The state representative discuss the terms and provisions of the treaty.

2 *Adoption.* When the form and content have been settled by the negotiating states, the treaty is adopted. This is only preparatory to (1) the authentication of the text of the treaty and (2) the signing thereof. [VCLT, art. 9]

3 *Authentication.* A definitive text of the treaty is established as the correct and authentic one. [VCLT, art. 10]

4 *Expression of consent.* The state parties express their consent to be bound by the terms of the treaty. The modes of such expression are provided in the VCLT.

5 *Registration.* The treaty is then registered with the Secretariat of the United Nations. Otherwise, the treaty may not be invoked before any UN organ [UN Charter, art. 102(2)] including the ICJ.

In the Philippines, the negotiation of treaties and their ratification are executive functions, subject to concurrence of the Senate.

Consent to be bound by the terms of a treaty may be expressed through:

1. **Signature**, when the negotiator is authorized to sign the treaty. This signature is sufficient to bind the state under the treaty if:
 - a. The treaty provides that signature shall have that effect;
 - b. It is otherwise established that the negotiating states agreed that signature should have that effect; or
 - c. The state can be shown to have had the intention to be bound by the signature (e.g., based on the powers of its representative) (Article 12(1), VCLT);
2. **Ratification**, the formal consent to the treaty given by the head of state,

sometimes in conjunction with the legislature;

3. **Exchange of instruments** constituting the treaty;
4. **Acceptance**;
5. **Approval**;
6. **Accession**, the method by which a state, under certain conditions, becomes a party to a treaty of which it is not a signatory and in the negotiation of which it did not take part;
7. **By any other means** agreed by the parties.

Amendment or modification of treaty

General rule: Consent of all the parties is required.

Exception: *If the treaty itself so allows*, two states may modify a provision only insofar as their relationship *inter se*.

Reservations

General rule: A reservation is a unilateral statement made by a state upon entering a treaty and operates to *exclude or modify the legal effect* of certain provision/s of the treaty in their application to the reserving state. [VCLT, art. 19]

Exceptions: A reservation shall not operate to modify or exclude the provisions of a treaty:

1. Where the treaty expressly prohibits reservations in *general*;
2. Where the treaty expressly prohibits that *specific* reservation being made; or
3. Where the reservation is *incompatible* with the object and purpose of the treaty. [Reservation to the Genocide Conventions Advisory Opinion (ICJ, 1951)]

Invalid treaties

1. If the treaty violates a *jus cogens* norm of international law;
2. If the conclusion of a treaty is procured by threat or use of force;
3. Error of fact, **provided** that such fact formed an essential basis of a state's consent to be bound;
4. If the representative of a state was corrupted to consent by another negotiating state;
5. If consent was obtained through fraudulent conduct of another negotiating state;
6. If the representative consented in violation of specific restrictions on authority, **provided** the restriction was notified to the other negotiating states prior to the representative expressing such consent;
7. If consent was given in violation of provisions of internal law **regarding competence to conclude treaties** that is manifest and of fundamental importance. [VCLT]

Grounds for termination

1. *Expiration of the term, or withdrawal* of a party in accordance with the treaty;
2. *Extinction of a party* to the treaty, when the treaty rights and obligations would not devolve upon the successor-state;
3. *Mutual agreement* of parties;
4. *Denunciation* or desistance by a party;
5. *Supervening impossibility* of performance;
6. Conclusion of a *subsequent inconsistent treaty*;
7. *Loss of subject matter*;
8. *Material breach* or violation of treaty
9. *Fundamental change in circumstance* (similar to the customary norm of *rebus sic stantibus*) such that the

foundation upon which the consent of a state to be bound initially rested has disappeared. [VCLT, art. 62]. The requisites are:

- a. The change is so substantial that the foundation of the treaty has altogether disappeared;
 - b. The change was unforeseen or unforeseeable at the time of the perfection of the treaty;
 - c. The change was not caused by the party invoking the doctrine
 - d. The doctrine was invoked within a reasonable time;
 - e. The duration of the treaty is indefinite;
 - f. The doctrine cannot operate retroactively (it must not adversely affect provisions which have already been complied with prior to the vital change);
10. *Outbreak of war between the parties*, unless the treaty relates to the conduct of war;
 11. *Severance of diplomatic relations*, if such relationship is indispensable for the treaty's application;
 12. *Jus cogens application*, or the emergence of a new peremptory norm of general international law which renders void any existing, conflicting treaty.

G. Nationality and Statelessness

G.1. NATIONALITY

Nationality is the tie that binds and individual to his state, from which he can claim protection and whose laws he is obliged to obey. It is membership in a political community with all its concomitant rights and obligations.

Nationality is important in international law because an individual ordinarily can participate in international relations only through the instrumentality of the state to which he belongs, as when his government asserts a claim on his behalf for injuries suffered by him in a foreign jurisdiction. This remedy would not be available to a stateless individual.

G.2. ACQUISITION OF NATIONALITY

a. Birth

1. *Jus soli*, where a person acquires the nationality of the state where he is born;
2. *Jus sanguinis*, where a person acquires the nationality of his parents.

b. Naturalization

Naturalization is a process by which a person acquires, voluntarily or by operation of law, the nationality of another state.

There are two (2) types of naturalization:

1. *Direct*:
 - a. By individual proceedings, usually judicial, under general naturalization laws;
 - b. By special act of legislature;
 - c. By collective change of nationality as a result of cession or subrogation (naturalization *en masse*);
 - d. By adoption (in some cases);

2. *Derivative*, which is usually subject to stringent restrictions and conditions:
 - a. On the wife of the naturalized husband;
 - b. On the minor children of the naturalized parent;
 - c. On the alien woman upon marriage to a national.

G.3. MULTIPLE NATIONALITY

Multiple nationality is acquired as the result of the concurrent application to an individual of the conflicting municipal laws of two or more states claiming him as their national.

a. Illustrations

1. A child born in the United States of Filipino parents would be an American national under *jus soli* and a Filipino national under *jus sanguinis*;
2. A woman marrying a foreigner may retain her own nationality under the laws of her state while also acquiring the nationality of her husband under the laws of his state.

b. Doctrine of indelible allegiance

An individual may be compelled to retain his original nationality notwithstanding that he has already renounced or forfeited it under the laws of a second state whose nationality he has acquired [Nachura].

c. Conflict of nationality laws

Under the *Hague Convention of 1930*, any question as to whether a person possesses the nationality of a particular state shall be determined in accordance with the law of that state. These laws shall be recognized by other states so long as they are consistent with international conventions, international customs and the principles of law generally recognized with regard to nationality.

d. Principle of effective nationality

Within a third state, a person having more than one nationality shall be treated as if he had only one. The third state shall recognize

conclusively in its territory either the nationality of the country in which he is habitually and principally present or the nationality of the country with which he appears to be in fact most closely connected.

The courts of third states resolve the conflict by having recourse to international criteria and their prevailing tendency is to prefer the real and effective nationality. [*Nottebohm Case (ICJ, 1955)*]

G.4. LOSS OF NATIONALITY

1. Voluntary
 - a. Renunciation (express or implied);
 - b. Request for release.
2. Involuntary
 - a. Forfeiture as a result of some disqualification or prohibited act;
 - b. Substitution of one nationality for another.

G.5. Statelessness

Statelessness is the condition or status of an individual who is born without any nationality or who loses his nationality without retaining or acquiring another [*CRUZ*].

Under the *Convention Relating to the Status of Stateless Persons (1960)*, a stateless person is entitled to, among others, the right to religion and religious instruction, access to courts, elementary education, public relief and assistance and rationing of products in short supply, as well as treatment of no less favorable than that accorded to aliens.

Also, under the *Universal Declaration of Human Rights*:

1. Everyone has a right to the nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Citizenship of Foundlings

Foundlings are citizens under international law. Article 24 of the International Covenant on Civil and Political Rights provides for the right of

every child "to acquire a nationality." The Philippines is obligated under various conventions such as the ICCPR to grant nationality from birth and ensure that no child is stateless. This grant of nationality must be at the time of birth, and it cannot be accomplished by the application of our present naturalization laws, Commonwealth Act No. 473, as amended, and RA 9139, both of which require the applicant to be at least 18 years old. [*Poe-Llamanzares v. COMELEC*, G.R. No. 221697 (2016)] (N.B. Outside of the bar coverage)

In a case decided by the Supreme Court, the Chief Justice pointed out that in 166 out of 189 countries surveyed (or 87.83%), foundlings are recognized as citizens. These circumstances, including the practice of *jus sanguinis* countries, show that it is a generally accepted principle of international law to presume foundlings as having been born of nationals of the country in which the foundling is found. [*Poe-Llamanzares v. COMELEC*, G.R. No. 221697 (2016)] (N.B. Outside of the bar coverage)

H. State Responsibility

H.1. DOCTRINE OF STATE RESPONSIBILITY

i. DEFINITION

It is a set of principles for when and how states shall become responsible for breaches of international obligation and who shall be held responsible for such.

Every internationally wrongful act of a state entails the international responsibility of that State [*Articles on State Responsibility ("ASR")*, art. 1]

N.B. Portions of the ASR codify customary international law on State responsibility.

ii. ELEMENTS

There is an internationally wrongful act of a state when the conduct consisting of an action or omission:

1. Is attributable to the State under international law; *and*
2. Constitutes a breach of an international obligation of a State. [*ASR*, art. 2].

The characterization of an act of a state as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law. [*ASR*, art. 4]

iii. ATTRIBUTION

Under the *ASR*, the following acts are attributable to States, i.e. States may be held internationally responsible for them:

1. Conducts of organs of a state (art. 4);
French secret service agents conducted undercover operations which led to the sinking of the Dutch-registered Greenpeace ship *Rainbow Warrior*. France admitted responsibility. (*Rainbow Warrior*

Case);

2. Conducts of persons or entities exercising elements of governmental authority (art. 5);

A State is responsible for damage suffered by a foreigner as the result of acts or omissions of autonomous institutions exercising public functions of a legislative or administrative character, if such acts or omissions contravene the international obligations of the State. (*League of Nations, Conference for the Codification of International Law, Bases of Discussion*)

3. Conducts of organs placed at the disposal of a state by another state (art. 6);

A section of the health service or some other unit placed under the orders of another country to assist in overcoming an epidemic or natural disaster, or judges appointed in particular cases to act as judicial organs of another State. (Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries)

4. Acts done in excess of authority or in contravention of instructions (*ultra vires* acts) (art. 7);

Two Mexican military officers, having failed to extort money from Caire, a French national, killed the latter. Such acts were deemed attributable to Mexico. (*Caire Case*)

5. Conduct directed or controlled by a state (art. 8);

The United States was responsible for the "planning, direction and support" given by the United States to Nicaraguan operatives. (*Nicaragua Case*)

6. Conduct carried out in the absence or default of the official authorities (art. 9);

The acts of the Revolutionary Guards or "Komitehs" in performing immigration, customs and similar

functions at Tehran airport immediately after the revolution in the Islamic Republic of Iran was attributable to the Islamic Republic of Iran, on the basis that, if it was not actually authorized by the Government, then the Guards at least exercised elements of governmental authority in the absence of official authorities, in operations of which the new Government must have had knowledge and to which it did not specifically object. (*Yeager v Iran*)

7. Conduct of insurrectional or other movements (*art. 10*);

An American citizen, employed by an American company in Iran, alleged that he was forcefully expelled from Iran three days before the Islamic Revolutionary Government took office and claimed damages for his loss of employment benefits. The commission affirmed the principle that where a revolution leads to the establishment of a new government, the state is held responsible for the act of the overthrown government. (*Short v Iran*)

8. Conduct acknowledged and adopted by a state as its own (*art. 11*).

The policy announced by the Ayatollah Khomeini of maintaining the occupation of the Embassy and the detention of its inmates as hostages for the purpose of exerting pressure on the US Government as complied with by other Iranian authorities and endorsed by them repeatedly in statements made in various contexts were attributable to the State. (*United States Diplomatic and Consular Staff in Tehran*)

iv. EFFECTIVE CONTROL

Under the law on state responsibility, a state is responsible only for the acts of its organs and per the *Nicaragua* case, for those non-state actors over which it exercised "effective

control," that is, it should have instructions or provided the direction pursuant to which the perpetrators of the wrongful act acted.

In the 2007 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* case, the ICJ said the "over-all control test" was only relevant in in so far as the question of the characterization of the Yugoslav conflict as an international armed conflict or whether or not the conflict has been internationalized; it is not relevant in so far but not to the task of determining whether a state is responsible for the acts of certain non-state organs involved in that same international armed conflict.

Effective Control and Overall Control; Distinguished

<i>Effective Control</i>	<i>Over-All Control</i>
Control must have been exercised in respect to each individual act or omission which constitutes the breach. The private persons or groups must have been mere agents of the state who were told what had to be done at all stages.	Control must have gone "beyond the mere financing and equipping of such forces" and must have involved "participation in the planning and supervision of military operations."
Provides a higher threshold for attribution. A general situation of dependence and support would thus be insufficient to justify attribution.	Presents lower threshold for attribution. There need not be a showing of actual or direct control.
When dealing with the matter of state responsibility	When dealing with the matter of individual criminal responsibility and the application of the rules of international humanitarian law (e.g. <i>Prosecutor v Tadic</i>)

H.2. CONSEQUENCES OF STATE RESPONSIBILITY

a. Duty to cease the act

The State responsible for the wrongful act is under the obligation to:

1. Cease the act if it is still continuing;
and
2. Offer appropriate assurances and guarantees of non-repetition [ASR, art. 30]

b. Duty to make reparations

The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.

Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State. [ASR, art. 31]

The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations to make reparations. [ASR, art. 32]

There are three forms of reparation:

1. Restitution;
2. Compensation; *and*
3. Satisfaction.

i. Restitution

A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:

1. Is not materially impossible;
2. Does not involve a burden out of all proportion to the benefit of the party deriving from restitution instead of compensation. [ASR, art. 35]

ii. Compensation

The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby,

insofar as such damage is not made good by restitution.

The compensation shall cover any financially assessable damage including loss of profits insofar as it is established. [ASR, art. 36]

iii. Satisfaction

The State responsible for an internationally wrongful act is under an obligation to give satisfaction for the injury caused by that act insofar as it cannot be made good by restitution or compensation.

Satisfaction may consist in an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.

Satisfaction shall not be out of proportion to the injury and may not take a form humiliating to the responsible State. [ASR, art. 37]

I. Jurisdiction of States

I.1. DEFINITION

Jurisdiction means the power of a state under international law to govern persons and property by its municipal law. This may be criminal or civil, and may be exclusive or concurrent with other states. [HARRIS]

I.2. KINDS OF JURISDICTION

Prescriptive jurisdiction refers to the power of a State to make its law applicable to the activities, relations, or status of persons, or the interests of persons in things, whether by legislation, by executive act or order, by administrative rule or regulation, or by determination by a court.

Adjudicative jurisdiction refers to a State's jurisdiction to subject persons or things to the process of its courts or administrative tribunals, whether in civil or in criminal proceedings, whether or not the state is a party to the proceedings.

Enforcement jurisdiction refers to a State's jurisdiction to enforce or compel compliance or to punish noncompliance with its laws or regulations, whether through the courts or by use of executive, administrative, police, or other nonjudicial action.

I.3. PRINCIPLES OF STATE JURISDICTION

1. **Territoriality principle:** Jurisdiction is determined by reference to the place where the act occurred or was committed;
2. **Nationality principle:** A court has jurisdiction if the *offender* is a national of the forum State;
3. **Protective principle:** A court is vested with jurisdiction if a national interest or policy is injured or violated;
4. **Universality principle:** Jurisdiction is asserted with respect to acts considered committed against

the whole world (e.g., piracy, see *People v. Lo-lo and Saraw* (1922)).

5. **Passive personality principle:** A court has jurisdiction if the *offended party* of the act is a national of the forum state. [S.S. *Lotus Case* (PCA, 1927)]
6. **Conflicts of jurisdiction:** A dispute can be brought entirely or partly before two or more states.

I.4. RESERVED DOMAIN OF DOMESTIC JURISDICTION

It is the domain of state activities where the jurisdiction of the state is not bound by international law. The *extent* of this domain depends on international law and varies according to its development (*i.e.*, when a norm crystallizes into custom).

The reservation of this domain is without prejudice to the use of enforcement measures under *UN Charter, ch. VII*.

I.5. DOCTRINE OF STATE IMMUNITY

It refers to a principle by which a state, its agents, and property are immune from the jurisdiction of another state [MAGALLONA].

This principle is premised on the juridical equality of states, according to which a state may not impose its authority or extend its jurisdiction to another state without the consent of the latter through a waiver of immunity. Thus, domestic courts must decline to hear cases against foreign sovereigns out of deference to their role as sovereigns.

Immunity may be:

1. *Absolute sovereign immunity*, where a state cannot be sued in a foreign court no matter what the act it is sued for; or
2. *Restrictive sovereign immunity*, where a state is immune from suits involving governmental actions (*jure imperii*), but not from those arising from commercial or non-governmental activity (*jure gestionis*).

Immunity as a customary norm

- The principle of sovereign immunity from suits is a customary norm of international law that holds, unless waived by the state concerned.
- Such immunity applies even if the claim against the state is for violation of a *jus cogens* norm in international law.
- Furthermore, State assets are also immune from execution in connection with such claim. [*Jurisdictional Immunities of the State Case (ICJ, 2012)*]

Who determines immunity under Philippine law

- Under Philippine law, the DFA's function includes the determination of persons and institutions covered by diplomatic immunities.
- When this determination is challenged, the DFA is entitled to seek relief from the court so as not to seriously impair the conduct of the country's foreign relations. The DFA must be allowed to plead its case whenever necessary or advisable to enable it to help keep the credibility of the Philippine government before the international community.
- This authority is *exclusive* to the DFA. A determination by the OSG, or by the OGCC for that matter, of state immunity does not inspire the same degree of confidence as a DFA certification.
- *But DFA determination is not conclusive.* Even with a DFA certification, however, the court is not precluded from making an inquiry into the intrinsic correctness of such certification. [*China Nat'l Machinery & Equipment Corp. (Group) v. Sta. Maria (2012)*, or the *Northrail Case*]

Criminal jurisdiction on board merchant ships and government ships operated for commercial purpose

The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage. EXCEPTIONS:

1. if the consequences of the crime extend to the coastal State;
2. if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
3. if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
4. if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

Except as provided in Part XII (Protection and Preservation of the Marine Environment) or with respect to violations of laws and regulations adopted in accordance with Part V (Exclusive Economic Zone), the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters. [Article 27, UNCLOS]

Immunity cannot be invoked in commercial transactions of ships owned and operated by a State

A State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State in a proceeding which relates to the operation of that ship if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes. [Article 16, *United Nations Convention on Jurisdictional Immunities of States and Their Property*]

Immunity of warships from execution

A state's naval vessel may not be proceeded against to answer for said state's financial liabilities to a third party. It stated that, "in accordance with general international law, a warship enjoys immunity" and that "any act which prevents by force a warship from discharging its mission and duties is a source of conflict that may endanger friendly relations among States." [*Argentina v. Ghana (ITLOS, 2012)*]

J. Treatment of Aliens

J.1. STANDARD OF TREATMENT

- **No obligation to admit aliens:** Flowing from its right to existence and as an attribute of sovereignty, no state is under obligation to admit aliens. The state can determine in what cases and in under what conditions it may admit such.
- Once it admits aliens, under the international standard of justice, which calls for compliance with the ordinary norms of official conduct observed in civilized jurisdictions, aliens should be protected by certain minimum standards of humane protection, however harsh the municipal laws of a state may be.
- States have concomitant obligations with their rights as sovereigns over their territories "Territorial sovereignty [...] involves the exclusive right to display the activities of a State. This right has a corollary, a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory." [*Island of Las Palmas Arb. (PCA, 1928)*]
- However, an alien cannot claim a preferred position vis-a-vis the national of the state. [*see Calvo Doctrine, infra*]

J.2. STATE RESPONSIBILITY

A state may be held responsible for:

1. An international delinquency;
2. Directly or indirectly imputable to it;
3. Which causes injury to the national of another state.

Liability will attach to the state where its treatment of the alien falls below the international standard of justice or where it is remiss in according him the protection or redress that is warranted by the circumstances.

The propriety of governmental acts should be put to the test of international standards. The treatment of an alien, in order to constitute an international delinquency, should amount to an outrage, to bad faith, to willful neglect of duty, or to an insufficiency of governmental action so far short of international standards that every reasonable and impartial man would readily recognize its insufficiency [*Neer Case (PCIJ, 1926)*].

For the enforcement of this state responsibility, the following must be complied with:

1. Exhaustion of local administrative remedies;
2. Representation of the alien by his own state in the international claim for damages.

J.3. CALVO CLAUSE

A stipulation which states that the foreign party must rely exclusively on local remedies and not seek any diplomatic protection.

Rationale: (1) Non-intervention; and (2) aliens are entitled only to such rights as are accorded nationals and thus had to seek redress for grievances exclusively in the domestic arena. [*SHAW*]

e.g. A stipulation may be made by virtue of which an alien waives or restricts his right to appeal to his own state in connection with any claim arising from a contract with a foreign state and limits himself to the remedies available under the laws of that state.

J.4. EXTRADITION

Extradition means the surrender of a person by one state to another state where he is wanted for prosecution or, if already convicted, for punishment [*CRUZ*].

It is also the removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting state or government to hold him in connection with any criminal investigation directed against him in connection with any criminal investigation directed against him or the execution of a

penalty imposed on him under the penal or criminal law of the requesting state or government. [*Pres. Dec. 1086*]

Governed by treaty: Extradition is governed by treaty between the state of refuge and the state of origin.

a) Fundamental principles

1. Extradition is based on the consent of the state of the state of asylum as expressed in a treaty or manifested as an act of goodwill.
2. **Principle of specialty:** A fugitive who is extradited may be tried only for the crime specified in the request for extradition and included in the list of offenses in the extradition treaty. [*US v. Rauscher, 119 U.S. 407 (1886)*]
3. Any person may be extradited, whether he be a national of the requesting state, of the state of refuge or of another state.
4. Political and religious offenders are generally not subject to extradition. For the purpose of extradition, genocide and murder of the head of state or any member of his family are not political offenses.
5. In the absence of special agreement, the offense must have been committed within the territory or against the interests of the demanding state.
6. **Rule of double criminality:** The act for which extradition is sought must be punishable in both the requesting and requested states.
7. **Aut dedere aut judicare** (means 'either extradite or prosecute') is a conventional obligation of States found in various treaties. A state subject to this obligation is bound to extradite if it does not prosecute, and prosecute if it does not extradite.

b) Procedure

- 1 A request for extradition is presented through diplomatic channels to the state

	of refuge with the necessary papers for identification.
2	The request is received by the state of refuge.
3	A judicial investigation is conducted by the state of refuge to ascertain if the crime is covered by the extradition treaty and if there is a <i>prima facie</i> case against the fugitive according to its own laws.
4	If there is a <i>prima facie</i> case, a warrant of surrender will be drawn and the fugitive will be delivered to the state of origin.

state of origin	state.
Calls for the return of the fugitive to the requesting state	An undesirable alien may be deported to a state other than his own or the state of origin.

The **evaluation process** partakes of the nature of a criminal investigation, having consequences which will **result in deprivation of liberty of the prospective extraditee**. A favorable action in an extradition request exposes a person **to eventual extradition to a foreign country**, thus exhibiting the penal aspect of the process.

The evaluation process itself is like a preliminary investigation since both procedures may have the same result: the arrest and imprisonment of the respondent. The basic rights of notice and hearing are applicable in criminal, civil and administrative proceedings. Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, may claim the right to appear therein and present their side [*Secretary of Justice v. Lantion (2000)*].

c) Extradition and deportation distinguished

<i>Extradition</i>	<i>Deportation</i>
Effected at the request of another state	Unilateral act of the state
Based on offenses committed in the	Based on causes arising in the local

K. International Human Rights Law

Definition

Human rights are those fundamental and inalienable rights which are essential for life as a human being. They pertain to rights of an individual as a human being which are recognized by the international community as a whole through their protection and promotion under contemporary international law.

Classification

1. *First generation rights* consist of civil and political rights;
2. *Second generation rights* consist of economic, social and cultural rights;
3. *Third generation rights* consists of the rights to development, to peace, and to environment. [Vasak]

<i>First generation</i>	<i>Second generation</i>
<i>Obligatory force</i>	
<i>Strictly (or objectively) obligatory, whatever the economic or other conditions of the states obligated</i>	<i>Relatively obligatory, states are required to progressively achieve the full realization of these rights "to the maximum of their available resources"</i>
<i>Derogation/restriction</i>	
May only be derogated in a public emergency	May be restricted for the general welfare, with or without an "emergency that threatens the independence or security of a state party."

K.1. UNIVERSAL DECLARATION OF HUMAN RIGHTS

The *UDHR* is the first comprehensive catalogue of human rights proclaimed by an international organization.

It is not a treaty. It has no obligatory character because it was adopted by the UN General Assembly as *Resolution 217A (III)*. As a resolution, it is merely recommendatory.

Despite this, the *UDHR* is considered a normative instrument that creates binding obligations for all states because of the consensus evidenced by the practice of states that the UDHR is now binding as part of international law [CARILLO].

The *UDHR* embodies both first and second generation rights. The **civil and political rights** enumerated include:

1. The right to life, liberty, privacy and security of person;
2. Prohibition against slavery;
3. The right not to be subjected to arbitrary arrest, detention or exile;
4. The right to fair trial and presumption of innocence;
5. The right to a nationality;
6. The right to freedom of thought, conscience and religion;
7. The right to freedom of opinion and expression;
8. Right to peaceful assembly and association;
9. The right to take part in the government of his country.

The **economic, social and cultural rights** enumerated include:

1. The right to social security;
2. The right to work and protection against unemployment;
3. The right to equal pay for equal work;
4. The right to form and join trade unions;
5. The right to rest and leisure.

K.2. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The *ICCPR* is an international covenant and is binding on the respective state parties.

It embodies the **first generation of human rights**, although it lists more rights than the *UDHR*:

1. The right to own property;
2. The right to seek in other countries asylum from prosecution;
3. The right of members of ethnic, religious or linguistic groups not to be denied to enjoy their own culture, to profess and practice their own religion, or to use their own language;
4. The right to compensation in case of unlawful arrest;
5. The right to legal assistance in criminal prosecution;
6. The right against self-incrimination;
7. Protection against double jeopardy;
8. Right to review by higher tribunal in case of criminal conviction;
9. Right of every child to nationality;
10. Right to protection of a child as required by his status as a minor;
11. Right of persons below 18 years old not to be sentenced to death for crimes;
12. Right against the carrying out of death sentence on the part of a pregnant woman.

The following are obligations of state parties under the *ICCPR*:

1. State parties undertake to respect and to ensure to all individuals within their territory the rights enumerated therein, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status.

2. State parties are required to take the necessary steps to adopt legislative or other measures that are necessary to give effect to the rights recognized in the *ICCPR*.
3. State parties must ensure that any person whose rights or freedoms are violated have an effective remedy, notwithstanding that the violation has been committed by persons action in an official capacity.
4. State parties must ensure that any person claiming such remedy shall have his right thereto determined by competent judicial, administrative or legislative authority, and that they shall enforce the remedy when granted.

K.3. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The *ICESCR*, like the *ICCPR*, is an international covenant and is binding on the respective State Parties.

It embodies the **second generation of human rights**, although it lists more rights than the *UDHR*:

1. Right to health;
2. Right to strike;
3. Right to be free from hunger;
4. Rights to enjoy the benefits of scientific progress;
5. Freedom for scientific research and creativity.

Under the *ICESCR*, state parties are required to undertake the necessary steps to the maximum of its available resources, with a view to achieving progressively the full realization of the rights enumerated in the covenant by all appropriate means.

Common provisions in the ICCPR and ICESCR

The common provisions of the two covenants deal with collective rights, namely:

1. The right of self-determination of peoples;
2. The right of peoples to freely dispose of their natural wealth and resources;
3. The right of peoples not to be deprived of their own means of subsistence.

These rights were not covered by the *UDHR*.

L. International Humanitarian Law

Definition

International Humanitarian Law (IHL) is the branch of public international law which governs armed conflicts to the end that the use of violence is limited and that human suffering is mitigated or reduced by regulating or limiting the means of military operations and by protecting those who do not or no longer participate in the hostilities.

It has two branches:

1. **Law of The Hague**, which establishes the rights and obligations of belligerents in the *conduct* of military operations, and limits the *means* of harming the enemy; *and*
2. **Law of Geneva**, which is designed to safeguard military personnel who are no longer taking part in the fighting and people not actively engaged in hostilities (i.e. civilians). [*International Committee of the Red Cross ("ICRC")*].

Philippine Practice

RA 9851 was enacted on December 11, 2009. It is the Philippine act on crimes against international humanitarian law, genocide, and other crimes against humanity. Its policies are:

1. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as a part of the law of the land.
2. The state adopts the generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of our nation.

L.1. CATEGORIES OF ARMED CONFLICT

IHL distinguishes two types of armed conflicts, namely:

1. International armed conflicts, opposing two or more States, and
2. Non-international armed conflicts, between governmental forces and non-governmental armed groups, or between such groups only.

An internationalized non-international armed conflict is a civil war characterized by the intervention of the armed forces of a foreign power [GASSER].

a) International armed conflicts

An international armed conflict occurs when one or more states have recourse to armed force against another state [*Prosecutor v. Tadic (ICTY, 1990)*], regardless of the reasons or the intensity of this confrontation.

Relevant rules of IHL may be applicable even in the absence of open hostilities. Moreover, no formal declaration of war or recognition of the situation is required.

The existence of an international armed conflict, and as a consequence, the possibility to apply IHL to this situation, depends on what actually happens on the ground. It is based on factual conditions. [ICRC]

b) Internal or non-international armed conflicts

The main legal sources in this regard are the *Common Article 3, Geneva Conventions*, and *Article 1, Additional Protocol II*.

Common Article 3 applies to "armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties." These include armed conflicts in which one or more non-governmental armed groups are involved.

Article 1 develops *Common Article 3*. It applies to:

1. All armed conflicts which take place in the territory of a state party;
2. Between its armed forces and dissident armed forces or other organized groups;

3. Which, under responsible command, exercise such control over a part of its territory;
4. As to enable to carry out sustained and concerted military operations and to implement the *Protocol*.

IHL also establishes a distinction between non-international armed conflicts in the meaning of *Common Article 3, Geneva Conventions of 1949* and non-international armed conflicts falling within the definition provided in *Article 1, Additional Protocol II*.

The definition under the *Article 1* is narrower than that under *Common Article 3*:

1. It introduces a requirement of territorial control, by providing that non-governmental parties must exercise such territorial control "as to enable them to carry out sustained and concerted military operations and to implement this *Protocol*."
2. *Additional Protocol II* expressly applies only to armed conflicts between State armed forces and dissident armed forces or other organized armed groups.

However, *Additional Protocol II* "develops and supplements" *Common Article 3* "without modifying its existing conditions of application" (*Article 1, 1st par.*). This means that the restrictive definition is relevant for the application of *Protocol II* only, but does not extend to the law of non-international armed conflict in general.

In any case, while *Common Article 3* is recognized as a customary norm of international law and binding to all states, *Additional Protocol II* is a treaty binding only to state parties. Its rules may, however, develop onto customary norms (ICRC).

c) War of national liberation

An armed conflict may be of such nature in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination.

This conflict is considered an *international* armed conflict under *Article 1, 3rd and 4th pars., Protocol I*.

Wars by peoples against racist, colonial and alien domination “for the implementation of their right to self-determination and independence is legitimate and in full accord with principles of international law,” and that any attempt to suppress such struggle is unlawful (*Resolution 3103 (XXVIII)*).

When peoples subjected to alien domination resort to forcible action in order to exercise their right to self-determination, they “are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.” [*UN GA Reso. 2625 (XXV)*]

L.2. CORE INTERNATIONAL OBLIGATIONS OF STATES IN IHL

Common Article 1 of all four *Geneva Conventions* is a key provision when it comes to a state’s responsibilities under IHL. It provides that states are responsible to “respect and ensure respect” for the conventions in all circumstances.

In general, IHL defines the following obligations:

1. Parties to an armed conflict, together with their armed forces, do not have unlimited choice of methods or means of warfare. They are prohibited from employing weapons or means of warfare that cause unnecessary damage or excessive suffering.
2. Parties to an armed conflict shall, at all times, distinguish between civilian population and the combatants (principle of distinction). Civilians shall be spared from military attacks which shall be directed only against military objectives.
3. Persons *hors de combat* are those who have been injured in the course of hostile battle action and are no longer able to directly take part in hostilities. They shall be protected and treated humanely without any adverse distinction. Their right to life and physical and moral integrity shall be respected.

4. It is prohibited to kill or injure an enemy who is *hors de combat* or who surrenders.
5. The wounded and the sick shall be protected and cared for by the party to the conflict which has them in its power. Protection shall also apply to medical personnel, establishments, transports and material.
6. Combatants and civilian who are captured by authority of the party to a dispute are entitled to respect for their right to life, dignity, conviction, and other personal rights. They shall be protected against acts of violence or reprisals. [*Legality of the Threat or Use of Nuclear Weapons Advisory Opinion (1996)*]

The *ICCPR*, particularly its protection on the right to life, does not determine the legality of the use of nuclear weapons in an armed conflict. What applies is the *lex specialis*, which is the IHL. It determines whether the taking of life in times of war has been arbitrary.

L.3. PRINCIPLES OF IHL

a) Combatants

Members of the armed forces of a party to a conflict (*Article 3(2), Protocol 1*). They have the right to participate directly and indirectly in hostilities (*Art 43(2) Protocol 1*). Only combatants are allowed to engage in hostilities.

A combatant is allowed to use force, even to kill, and will not be held personally responsible for his acts, as he would be where he to the same as a normal citizen (*Gasser*).

b) Hors de combat

Under *Article 41(2), Protocol I*, a person is *hors de combat* if:

1. He is in the power of an adverse party to the conflict;

2. He clearly expresses an intention to surrender; or
3. He has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and is therefore incapable of defending himself, *provided* that in any of these cases, he abstains from any hostile act and does not attempt to escape.

Persons *hors de combat* shall be protected and treated humanely without any adverse distinction. Their right to life and physical and moral integrity shall be respected.

c) Protected persons

THEY ARE THOSE WHO ENJOY OR ARE ENTITLED TO PROTECTION UNDER THE GENEVA CONVENTIONS. CATEGORIES OF PROTECTED PERSONS INCLUDE:

1. The wounded, the sick, and shipwrecked;
2. Prisoners of war;
3. Civilians.

d) Civilians

For purposes of protection, civilians are further classified as:

1. Civilians who are victims of conflict in countries involved;
2. Civilians in territories of the enemy;
3. Civilians in occupied territories;
4. Civilians internees.

e) Prisoners of war

Definition

Under *Article 4, Geneva Convention (III)*, prisoners of war are persons belonging to one of the following categories:

1. Members of the armed forces of a party to the conflict, including militias or volunteer corps;
2. Militias or volunteer corps operating in or outside their own territory, even if such territory is occupied provided:

3. They are being commanded by a person responsible for his subordinates;
4. Have a fixed distinctive sign recognizable at a distance;
5. Carries arms openly;
6. Conducts their operations in accordance with the laws and customs of war;
7. Members of regular armed forces who profess allegiance to a government or authority not recognized by the detaining power;
8. Civilians who accompany the armed forces, provided that they have received authorization from the armed forces which they accompany;
9. Members of crews of merchant marine and the crews of civil aircraft of the parties to the conflict;
10. Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war;
11. Persons belonging to the armed forces of the occupied territory

Rights and privileges

1. They must be treated humanely, shall not be subjected to physical or mental torture, shall be allowed to communicate with their families, and may receive food, clothing, educational and religious articles.
2. They may not be forced to reveal military data except their name, rank, serial number, army and regimental number and date of birth. They may not be compelled to work for military services.
3. All their personal belonging except their arms and military papers remain their property.

4. They must be interned in a healthful and hygienic place.
5. After the conclusion of peace, their speedy repatriation must be accomplished as soon as is practicable.

Martens clause/principle of humanity

In cases not covered by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

L.4. LAW ON NEUTRALITY

It is the law governing a country's abstention from participating in a conflict or aiding a participant of such conflict, and the duty of participants to refrain from violating the territory, seizing the possession, or hampering the peaceful commerce of the neutral countries (*The Three Friends*, 166 U.S. 1).

Neutrality is the legal status of a State in times of war, by which it adopts impartiality in relation to the belligerents with their recognition.

Neutral power

The *Hague Convention Respecting the Rights and Duties of Neutral Powers* (1907) governs the status of neutrality by the following rules:

1. The territory of the neutral power is inviolable.
2. Belligerents are forbidden to move troops or munitions of war and supplies across the territory of a neutral power.
3. A neutral power is forbidden to allow belligerents to use its territory for moving troops, establishing communication facilities, or forming corps of combatants.
4. Troops of belligerent armies received by a neutral power in its territory shall be interned by away from the theatre of war.

5. The neutral power may supply them with food, clothing or relief required by humanity.
6. If the neutral power receives escaped prisoners of war, it shall leave them at liberty. It may assign them a place of residence if it allows them to remain in its territory.
7. The neutral power may authorize the passage into its territory of the sick and wounded if the means of transport bringing them does not carry personnel or materials of war.

The *Geneva Convention (III)* allows neutral powers to cooperate with the parties to the armed conflict in making arrangements for the accommodation in the former's territory of the sick and wounded prisoners of war.

Interned persons among the civilian population, in particular the children, the pregnant women, the mothers with infants and young children, wounded and sick, may be accommodated in a neutral state in the course of hostilities, by agreement between the parties to the conflict.

Protecting power

A protecting power is a state or an organization:

1. Not taking part in the hostilities;
2. Which may be a neutral state;
3. Designated by one party to an armed conflict with the consent of the other;
4. To safeguard or protect its humanitarian interests in the conflict, the performance of which IHL defines specific rights and duties.

M. Law of the Sea

A. DEFINITION

The *United Nations Convention on Law of the Sea (UNCLOS)* is the body of treaty rules and customary norms governing the use of the sea, the exploitation of its resources, and the exercise of jurisdiction over maritime regimes (*Magallona*).

It is the branch of public international law which regulates the relations of states with respect to the use of the oceans.

B. BASELINES

A baseline is the line from which a breadth of the territorial sea and other maritime zones, such as the contiguous zone and the exclusive economic zone is measured. Its purpose is to determine the starting point to begin measuring maritime zones boundary of the coastal state.

There are two kinds of baselines:

1. **Normal baseline**, where the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state [Article 5, UNCLOS].
2. **Straight baseline**, where the coastline is deeply indented or cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight lines joining the appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured [Article 7, UNCLOS].

C. ARCHIPELAGIC STATES

It is a state made up of wholly one or more archipelagos. It may include other islands [Article 46, UNCLOS].

An archipelago is a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely related that such islands, waters and natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.

There are two kinds of archipelagos:

1. **Coastal**, situated close to a mainland and may be considered part thereof (*i.e.*, Norway);
2. **Mid-Ocean**, situated in the ocean at such distance from the coasts of firm land, (*i.e.*, Indonesia).

The archipelagic state provisions apply only to mid-ocean archipelagos composed of islands, and *not* to a partly continental state.

C.1. STRAIGHT ARCHIPELAGIC BASELINES

Straight baselines join the outermost points of the outermost islands and drying reefs of an archipelago, provided that within such baselines are included the main islands and an area in which the ratio of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. Such are called **straight archipelagic baselines**.

The breadth of the territorial sea, the contiguous zone, and the exclusive economic zone is measured from the straight archipelagic baselines.

Island and Rocks; Distinguished

An **island** is a naturally formed area of land, surrounded by water, which is above water at high tide.

Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf. [Article 121, UNCLOS]

C.2. ARCHIPELAGIC WATERS

These are the waters enclosed by the straight archipelagic baselines, regardless of their

depth or distance from the coast [Art 49(1), UNCLOS].

They are subject to the sovereignty of the archipelagic state, but subject to the right of innocent passage for the ships of all states.

C.3. ARCHIPELAGIC SEA LANES PASSAGE

It is the right of foreign ships and aircraft to have continuous, expeditious and unobstructed passage in sea lanes and air routes through or over the archipelagic waters and the adjacent territorial sea of the archipelagic state, "in transit between one part of the high seas or an exclusive economic zone." All ships and aircraft are entitled to the right of archipelagic sea lanes passage [Magallona; Article 53(1) in relation to Article 53(3) UNCLOS].

The archipelagic state designates the sea lanes as proposals to the "competent international organization." It is the International Marine Organization (IMO) which adopts them through Article 53(9), UNCLOS, which states that "the Organization may adopt only sea lanes and traffic separation schemes as may be agreed with the archipelagic state, after which such state may designate, prescribe or substitute them."

C.4. OTHER RIGHTS RELATING TO ARCHIPELAGIC WATERS

1. **Rights under existing agreement** on the part of third states **should be respected** by the archipelagic state.
2. Within its archipelagic waters, the archipelagic state shall **recognize traditional fishing rights** and other legitimate activities of immediately adjacent neighboring states.
3. The archipelagic state shall **respect existing submarine cables** laid by other states and "passing through its waters without making a landfall."

Under Article 1 of the 1987 Constitution, the archipelagic waters of the Philippines are characterized as forming part of "the internal waters of the Philippines."

However, under the UNCLOS, archipelagic waters consist mainly of the "waters around, between, and connecting the islands of the archipelago, regardless of breadth or dimension."

Thus, **conversion from internal waters** under the **Constitution** into **archipelagic waters** under the **UNCLOS** gravely derogates the sovereignty of the Philippine state, because sovereignty over internal waters may preclude the right of innocent passage and other rights pertaining to archipelagic waters under the **UNCLOS**.

Also, under *Article 47, UNCLOS*, it is not mandatory upon concerned states to declare themselves as archipelagic states; the Philippines did, under its new baselines law, RA 9522 upheld as constitutional [Magallona v. Executive Secretary (2011)].

D. INTERNAL WATERS

These are waters of lakes, rivers, and bays landward of the baseline of the territorial sea. Waters on the landward side of the baseline of the territorial sea also form part of the internal waters of the coastal state. However, in case of archipelagic states, waters landward of the baseline other than those rivers, bays and lakes, are **archipelagic waters** [Article 8(1), UNCLOS].

Internal waters are treated as part of a state's land territory, and are subject to the full exercise of sovereignty. Thus, the coastal state may designate which waters to open and which to close to foreign shipping.

E. TERRITORIAL SEA

These waters stretch up to 12 miles from the baseline on the seaward direction. They are subject to the jurisdiction of the coastal state, which jurisdiction almost approximates that which is exercised over land territory, *except* that the coastal state must respect the rights to:

1. Innocent passage; *and*

2. In the case of certain straits, to transit passage.

Innocent passage refers to navigation through the territorial sea without entering internal waters, going to internal waters, or coming from internal waters and making for the high seas. It must:

1. Involve only acts that are required by navigation or by distress, and
2. Not prejudice the peace, security, or good order of the coastal state.

Transit passage refers to the right to exercise freedom of *navigation* and *over flight* solely for the purpose of continuous and expeditious transit through the straights used for international navigation. The right cannot be unilaterally suspended by the coastal state.

<i>Innocent passage</i>	<i>Transit passage</i>
Pertains to navigation of ships only	Includes the right of over flight
Requires submarines and other underwater vehicles to navigate on the surface and show their flag.	Submarines are allowed to navigate in "normal mode" – i.e. submerged
Can be suspended, but under the condition that it does not discriminate among foreign ships, and such suspension is essential for the protection of its security, and suspension is effective only after having been duly published (Article 25, UNCLOS)	Cannot be suspended
In the designation of sea lanes and traffic separation schemes,	Designation of sea lanes and traffic separation schemes

the coastal state shall only take into account the recommendations of the competent international organization.	is subject to adoption by competent international organization upon the proposal and agreement of states bordering the straits.
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F. CONTIGUOUS ZONE

F.1. DEFINITION

The contiguous zone is that which is contiguous to its territorial sea. It may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.

F.2. JURISDICTION OVER CONTIGUOUS ZONE

In a contiguous zone, the coastal State may exercise the control necessary to:

- a. prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
- b. punish infringement of the above laws and regulations committed within its territory or territorial sea.

G. EXCLUSIVE ECONOMIC ZONE

G.1. DEFINITION

The exclusive economic zone (EEZ) is the stretch of area up to 200 miles from the baselines. Within this zone, a State may regulate non-living and living resources, other economic resources, artificial installations, scientific research, and pollution control.

G.2. JURISDICTION OVER EEZ

The *UNCLOS* gives the coastal State sovereign rights over all economic resources of the sea, seabed and subsoil in an area extending not more than 200 nautical miles beyond the baseline from which the territorial sea is measured (*Arts. 55 and 57, UNCLOS*).

Under the *UNCLOS*, states have the sovereign right to exploit the resources of this zone, but shall share that part of the catch that is beyond its capacity to harvest.

The resources covered include living and non-living resources in the waters of the seabed and its subsoil.

Coastal states have the primary responsibility to utilize, manage and conserve the living resources within their EEZ (*i.e.*, ensuring that living resources are not endangered by overexploitation), and the duty to promote optimum utilization of living resources by determining allowable catch.

If after determining the maximum allowable catch, the coastal state does not have the capacity to harvest the entire catch, it shall give other states access to the surplus by means of arrangements allowable under the *UNCLOS*. The *UNLCOS*, however, does not specify the method for determining "allowable catch."

Geographically disadvantaged states (*i.e.*, those who have no EEZ of their own or those coastal states whose geographical situations make them dependent on the exploitation of the living resources of the EEZ of other states) and *land-locked states* have the right to participate, on equitable basis, in the exploitation of the *surplus* of the *living resources* in the EEZ of coastal states of the same sub region or region.

A coastal state whose economy is overwhelmingly dependent on the exploitation of its EEZ, however, is not required to share its resources.

Within its EEZ, a coastal state may also:

1. Establish and use of artificial islands, installations and structures;
2. Conduct scientific research;
3. Preserve and protect its marine environment.

However, under *Article 58, UNCLOS*, all states enjoy the freedom of navigation, over flight, and laying of submarine cables and pipelines in the EEZ of coastal states.

The coastal state has the right to enforce all laws and regulations enacted to conserve and manage the living resources in its EEZ. It may board and inspect a ship, arrest a ship and its crew and institute judicial proceedings against them. In detention of foreign vessels, the coastal state has the duty to promptly notify the flag state of the action taken.

Conflicts regarding the attribution of rights and jurisdiction in the EEZ must be resolved on the basis of equity and in the light of all relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole (*Article 59, UNCLOS*).

H. CONTINENTAL SHELF

H.1. EXTENDED CONTINENTAL SHELF

It is the seabed and subsoil of the submarine areas extending beyond the territorial sea of the coastal state throughout the **natural prolongation of its lands** territory up to:

1. The outer edge of the continental margin; *or*
2. A distance of 200 nautical miles from the baselines of the territorial sea where the outer edge of the continental margin does not extend up to that distance.

Continental margin → the submerged prolongation of the land mass of the continental state, consisting of the

continental shelf proper, the continental slope, and the continental rise

H.2. LIMITS OF THE CONTINENTAL SHELF

The juridical or legal continental shelf covers the area until 200 nautical miles from baselines.

The extended continental shelf covers the area from the 200-mile mark to 350 nautical miles from the baselines depending on geomorphologic or geological data and information.

When the continental shelf extends beyond 200 nautical miles, the coastal state shall establish its outer limits.

At any rate, the continental shelf shall not extend beyond 350 nautical miles from the baseline of the territorial sea, or 100 nautical miles from the 2500-meter isobath (*i.e.*, the point where the waters are 2500 meters deep).

H.3. RIGHTS OF THE COASTAL STATE

The continental shelf does not form part of the territory of the coastal state.

It only has sovereign rights with respect to the exploration and exploitation of its natural resources, including the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to the **sedentary species**.

The coastal state has the exclusive right to authorize and regulate oil-drilling on its continental shelf.

These **rights are exclusive** in the sense that when the coastal state does not explore its continental shelf or exploit its resources, no one may undertake these activities without the coastal state's consent.

Continental shelf

Exclusive economic zone

Duty to manage and conserve living resources

No duty

Coastal state is obliged to manage and conserve living resources in the EEZ

Rights of the coastal state to natural resources

Relate to mineral and other non-living resources of the seabed and the subsoil

Have to do with natural resources of both waters super adjacent to the seabed and those of the seabed and subsoil

Rights of the coastal state to living resources

Apply only to sedentary species of such living resources

Do not pertain to sedentary species

I. THE AREA

I.1 DEFINITION

"Area" means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.

I.2. LEGAL STATUS OF THE AREA AND ITS RESOURCES

No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. [Article 137, UNCLOS]

The Area and its resources are the common heritage of mankind. [Article 136, UNCLOS] Activities in the Area shall be carried out for the benefit of mankind as a whole. [Article 140, UNCLOS]

The Area shall be open to use exclusively for peaceful purposes by all States. [Article 141, UNCLOS]

I.3. INTERNATIONAL SEABED AUTHORITY

It is the organization established by UNCLOS which acts on behalf of mankind in governing the regime of resources in the Area. It organizes, carries out and controls the activities of the Area on behalf of mankind as a whole.

The following form the Authority:

1. The Assembly – all state parties to the UNCLOS
2. The Council – the executive organ whose 36 members are elected by the Assembly
3. The Enterprise – the organ directly engaged in the exploration and exploitation of the resources of the Area, including the transporting, processing and marketing of minerals

I.4. ACTIVITIES IN THE AREA

The Enterprise carries out mining activities on behalf of the Authority:

1. Directly; or
2. By joint ventures with: a. State parties; b. State enterprises; or c. Natural or juridical persons sponsored by state parties.

Applicants for license in deep seabed mining are limited to those controlled by states parties to the UNCLOS or by their nationals.

J. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS)

J.1. DEFINITION

The ITLOS is an independent judicial body established by the *Third United Nations Convention on the Law of the Sea* to

adjudicate disputes arising out of the interpretation and application of the convention. It was established after Ambassador Arvido Pardo Malta addressed the General Assembly of the United Nations and called for “an effective international regime over the seabed and ocean floor beyond a clearly defined national jurisdiction.”

J.2. JURISDICTION OF THE ITLOS

Its jurisdiction covers all disputes submitted to it in accordance with the *UNCLOS*. It also includes matters submitted to it under any other agreement.

It is composed of 21 independent members elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.

J.3. PEACEFUL SETTLEMENT OF DISPUTES

Under *Article 2, 3rd par., UN Charter*, states have the duty to settle disputes by peaceful means. This obligation extends to state parties of the *UNCLOS*, underscoring the right of the parties to resort to peaceful means of their own choice on which they can agree any time.

J.4. COMPULSORY SETTLEMENT OF DISPUTES

Where no successful settlement can be achieved, or if the parties are unable to agree on the means of settlement of a dispute concerning the application of *UNCLOS*, such dispute may be governed by the principle of compulsory settlement, where procedures entail binding decisions.

The parties may choose, through a written revocable and replaceable declaration, to submit the dispute to:

1. ITLOS;
2. ICJ;
3. Arbitral tribunal;

4. Special arbitral tribunal.

The court or tribunal has jurisdiction over:

1. Any dispute submitted to it concerning the application or interpretation of *UNCLOS*; or
2. Any dispute concerning the interpretation or application of an international agreement:
 - a. Related to the purposes of the *UNCLOS*;
 - b. When such dispute is submitted to it in accordance with that agreement.

J.5. APPLICABLE LAWS

The court or tribunal shall apply the *UNCLOS* and other rules of international law not incompatible with the *UNCLOS*. It may also decide a case *ex aequo et bono* (what is equitable and just) if the parties so agree.

N. Madrid Protocol and Paris Convention

A. MADRID PROTOCOL

The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, or The Madrid Protocol is one of two treaties comprising the Madrid System for international registration of trademarks and it deals more with the procedure for filing than with substantive rights.

Its purpose is to provide a cost-effective and efficient way for trademark holders – individuals and businesses – to ensure protection for their marks in multiple countries through the filing of one application with a single office, in one language, with one set of fees, in one currency.

While an International Registration may be issued, it remains the right of each country or contracting party designated for protection to determine whether or not protection for a mark may be granted. Once the trademark office in a designated country grants protection, the mark is protected in that country just as if that office had registered it.

The Madrid Protocol also simplifies the subsequent management of the mark, since a simple, single procedural step serves to record subsequent changes in ownership or in the name or address of the holder with World Intellectual Property Organization's International Bureau. The International Bureau administers the Madrid System and coordinates the transmittal of requests for protection, renewals and other relevant documentation to all members.

B. PARIS CONVENTION

The Paris Convention for the Protection of Industrial Property was signed in 1883 and it is one of the first treaties dealing with intellectual property and its protection.

Among its substantive provisions are:

1. It requires that each member state grant the same quality and quantity of protection to eligible foreigners as it grants to its own nationals in respect to the intellectual property enumerated in the convention.
2. It provides that an applicant eligible for convention benefits who files a first regular patent or trademark application in any of the countries of the union, can then file subsequent applications in other countries of the union for a defined period of time which subsequent applications will have an effective filing date as of the first filed application.

O. International Environmental Law

A. DEFINITION

It is the branch of public international law comprising those substantive, procedural, and institutional rules which have as their primary objective the protection of the environment, the term environment being understood as encompassing "both the features and the products of the natural world and those of human civilization" (*Sands, Principles of International Environmental Law*).

B. BASIC PRINCIPLES

B.1. PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITY

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command (*Principle 7, Rio Declaration*).

B.2. PRECAUTIONARY PRINCIPLE

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation (*Principle 15, Rio Declaration*).

C. SUSTAINABLE DEVELOPMENT

It is development that meets the needs of the present without compromising the ability of future generations to meet their own needs (*Case Concerning the Gabčíkovo-Nagymaros Project* (1997)).

No state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence (*US v. Canada (Trail Smelter Case)* (1938)).

D. SIC UTERE TUO UT ALIENUM NON LAEDAS (PRINCIPLE 21 OF THE STOCKHOLM DECLARATION)

The **Stockholm Declaration**, or the **Declaration of the United Nations Conference on the Human Environment**, was adopted on June 16, 1972 in Stockholm, Sweden. It contains 26 principles and 109 recommendations regarding the preservation and enhancement of the right to a healthy environment.

Principle 21 provides: "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

P. International Economic Law

International economic law regulates the international economic order or economic relations among nations. However, the term "international economic law" encompasses a large number of areas. It is often defined broadly to include a vast array of topics ranging from public international law of trade to private international law of trade to certain aspects of international commercial law and the law of international finance and investment.

It is a field of international law that encompasses both the conduct of sovereign states in international economic relations, and the conduct of private parties involved in cross-border economic and business transactions.

International economic law covers, among others, the following:

1. International trade law, including both the international law of the World Trade Organization and GATT and domestic trade laws;
2. International economic integration law, including the law of the European Union, NAFTA and Mercosur;
3. Private international law, including international choice of law, choice of forum, enforcement of judgments and the law of international commerce;
4. International business regulation, including antitrust or competition law, environmental regulation and product safety regulation;
5. International financial law, including private transactional law, regulatory law, the law of foreign direct investment and international monetary law, including the law of the International Monetary Fund and World Bank;
6. The role of law in development;
7. International tax law; and

8. International intellectual property law (*Wenger*).

International economic law is based on the traditional principles of international law such as:

1. *Pacta sunt servanda*;
2. Freedom;
3. Sovereign equality;
4. Reciprocity;
5. Economic sovereignty.

It is also based on modern and evolving principles such as:

1. Duty to cooperate;
2. Permanent sovereignty over natural resources;
3. Preferential treatment for developing countries in general and the least-developed countries in particular.